

COMMERCIAL POLICY TOOL KIT

Prepared for:

USAID/G/EGAD/EM

Prepared by:

SRI INTERNATIONAL

Prime Contractor:

PRICEWATERHOUSECOOPERS

July 1998

TABLE OF CONTENTS

	<i>page</i>
PREFACE	i
I. INTRODUCTION	1
II. THE FOUR STEPS OF COMMERCIAL POLICY TOOL KIT	6
Overview of the Commercial Policy Tool Kit	6
Step 1: Just-in-Time Diagnostic Assessment	8
Step 2: Policy Impact Assessments	12
Step 3: Policy Tool Kit Application.....	13
Step 4: Implementing Policy Solutions	14
III. POLICY IMPACT DRILL DOWNS.....	16
1. Investment Policies.....	17
2. Pricing Policies.....	24
3. Import Policies	31
4. Financial Sector Policies.....	39
5. Exchange Rate Policies	47
6. Labor Policies 54	
7. Tax Policies	61
8. Export Policies.....	71
9. Intellectual Property Rights Protection Policies	81
APPENDIX: POLICY QUESTIONNAIRE.....	90

PREFACE

The Commercial Policy Tool Kit was developed at the request of the Office of Emerging Markets in the Center for Economic Growth and Agricultural Development in USAID’s Global Bureau to offer a menu of diagnostic and reform tools to support USAID Missions in commercial policy reform efforts. The Tool Kit was developed by Peter Boone, Ophelia Yeung, and Santiago Sedaca of SRI International under the Private Enterprise Development Support (PEDS III) Project, in which SRI is a subcontractor to Coopers & Lybrand.

The concept of a Commercial Policy Tool Kit originated with the Commercial Policy Model, designed by SRI International in 1993 to score countries’ business-friendliness in nine key policy categories. Since its inception, over 100 countries have been scored using this the Commercial Policy Model. Under the application of the model, countries are measured and benchmarked against their neighbors, competitors, and other regions. The model has proved to be a powerful technique to focus the attention of policymakers, business leaders, donor institutions and other stakeholders on the need to reform in specific commercial policy areas.

Recognizing the potential of this approach, USAID’s Office of Emerging Markets asked SRI to amplify the Commercial Policy Model by crafting a more detailed “drill-down” at the country level in the nine commercial policy areas. The purpose of the drill-down is to build upon the Commercial Policy model and develop a quick response system capable of providing “just-in-time” diagnostics and recommendations for USAID-assisted countries. The Commercial Policy Tool Kit is intended to provide a systematic framework for delivering a broad set of technical assistance in critical commercial policy areas, and assist in the implementation of policy change.

COMMERCIAL POLICY TOOL KIT

1. INTRODUCTION

In order to stimulate sustained export growth and private sector development, the most important action that can be taken by any nation is the introduction, full implementation, and maintenance of appropriate economic and commercial policies. Recent international experience is replete with examples of countries which have achieved accelerated growth through policy reform, as well as many cases of economies which have failed to grow, despite concerted efforts, because of counterproductive policy regimes.

In addition to sound commercial policies, other government and private initiatives such as improvement in educational standards, installation of infrastructure, and enhancement of competitiveness at the firm and industry levels are also important to long-term growth. But without a sound policy environment which “empowers” private firms to engage in productive activities, it is highly unlikely that accelerated development progress can be realized.

SRI International’s previous research and country analysis using the Commercial Policy Model¹ led to the conclusion that competitive markets are the best way found yet for organizing the production of goods and services. Domestic and external competition provides the incentives that unleash entrepreneurship and technological progress. However, it is also recognized that markets cannot operate in a vacuum; they require the proper legal and regulatory framework that only governments can provide. This pointed to the need for a new initiative to focus on the commercial policy framework to unleash the internal markets.

In the Commercial Policy Framework, SRI highlighted the factors² which contribute to sustainable economic growth. In the chart below we present an updated *commercial policy*

¹See “Global Growth Through Commercial Competition: Linking Commercial Policies, Economic Performance, and USAID Assistance,” prepared for USAID/PRE/EM under funding from the PEDS II contract in October 1993. SRI International is a subcontractor to Coopers & Lybrand under the PEDS project.

²These factors include both natural and “man-made” factors of production, including: resource endowments; labor; capital; infrastructure; and technology.

environment through which all of these factors must be *filtered*. As the chart indicates, commercial policies affect the business operating environment at the firm level in many ways. All factors of production must be directly filtered through a commercial policy environment, as well as a related set of operational procedures, which will ultimately determine how efficiently a company will use its factor endowments in the production of goods and services.

(INSERT 1)

CP PRODUCTION PROCESS

The nine key commercial policy categories identified by SRI include:

10. Investment Policies
11. Pricing Policies
12. Import Policies
13. Financial Sector Policies
14. Exchange Rate Policies
15. Labor Policies
16. Tax Policies
17. Export Policies
18. Intellectual Property Rights Protection Policies

USAID's Center of Economic Growth in the Global Bureau would like to have diagnostic tools developed for the nine commercial policy areas. A new Commercial Policy Tool Kit has been developed by SRI in an attempt to "drill down" deeper than the Commercial Policy Model by doing detailed in-country analysis, and by assessing specific operational procedures and impacts of the commercial policies in each category.

A current additional challenge facing USAID is the need to introduce practical mechanisms for monitoring and evaluating policy reform results, in a manner consistent with USAID's new management system. The new Commercial Policy Tool Kit addresses this challenge and need. It will enable Missions to establish baselines, and measure policy improvements in their key Strategic Objective categories

An additional motivation for the development of new tool kit is that policy reform in many of these commercial areas is often a prerequisite for developing country accession to, or compliance with, the World Trade Organization Agreement and other regional and bilateral trading agreements. Many developing countries need practical advice on how to make the necessary policy and institutional changes to make their commercial regimes WTO-compliant.

The new Commercial Policy Took Kit will cover the following areas:

- ☐ "Just-in-Time" System Checks and Measurements
- ☐ Policy Mapping
- ☐ Troubleshooting for Warning Signs
- ☐ Policy Impact Assessments
- ☐ Benchmarking Policy Measurements and Systems
- ☐ Stakeholder Focus Groups
- ☐ Policy Tool Kit Solutions

The goal of the Commercial Policy Tool Kit is to devise an effective system for diagnosing commercial policy problems and offering practical, “just-in-time” solutions to commercial policy problem areas. Economic and commercial policies constantly evolve in all countries, including industrial developing and transitioning economies. Policies need to be examined, adjusted, and revised in order to keep the business environment competitive and dynamic.

There is no single, “first best” set of policies, for they must accommodate and adjust to different and continuously changing conditions. Nevertheless, the actual experience of nations over the past few decades has yielded a strong consensus on the best general orientation for such policies. Specifically, frameworks which allow market forces such as simple “supply and demand” to work and which offer incentives for entrepreneurship by individuals and enterprises are most likely to generate sustained economic growth and improved standards of living. There will always be tradeoffs, such as the need to balance growth against stability, but most policy makers, officials and national constituencies have come to the conclusion that market-oriented policies are best.

The next logical questions are, what is the nature of policy reform, and what are the most effective means for putting into place appropriate policies? Simply stated, policy reform is the process of change -- altering the rules that govern economic operations -- from systems which constrain freedom of action and even punish initiative to systems which reward entrepreneurship and provide independence of action within reasonable limits of regulation. No society has yet found the definitive answer to the optimal balance between independence versus control over economic activities, but in the vast majority of nations it is necessary to limit and in fact reverse governments’ natural desire to regulate and control.

The new Commercial Policy Tool Kit will be consistent with the general framework of the SRI Commercial Policy Model. However, there are some limitations about how the model in its present form can be used to pro-actively help countries to undertake policy reform changes. As a result, the Tool Kit introduces several adjustments to the Commercial Policy Framework in order to provide more “hands on,” practical assistance to countries seeking to reform their policy regimes.

One limitation observed in the development of the Commercial Policy Model is that economic policies are difficult to appraise in strictly quantitative terms. Some policies and certain structures can be quantified. Policies which include numeric values (e.g., tax rates, tariff rates, levels and duration of investment incentives, etc.) lend themselves to statistical measurement. But most economic policies are qualitative. For example, foreign exchange regimes, labor laws, restrictions against foreign investment, and many other important policy areas which determine a nation’s policy environment can be quantitatively measured only with great difficulty.

Another constraint to the application of the Commercial Policy Model is the fact that it is based on variables which reflect policy positions, but do not necessarily incorporate the full context of existing legislation and institutional frameworks. Almost every policy in nearly all countries is unique when one examines its full extent, and hence should be addressed in the context of that

particular nation. In short, in addition to an objective quantitative assessment, most policies must be measured qualitatively as well -- based on in-country “customer feedback” and on more detailed regulatory and institutional assessments. The new Commercial Policy Tool Kit will enable USAID to obtain a more intricate in-country assessment of a country’s policy regime.

A further challenge to cross-country measurement is determining the extent to which policy reforms are actually implemented. Many changes are “announced” in various ways, but there is often no full verification that the action was taken officially. Moreover, there is often a considerable difference between policies announced and policies implemented. In some cases, reforms (e.g., streamlined registration procedures) are simply ignored or forgotten by those charged with implementation. In addition, the new policies may be embedded in operating procedures rather than in official edicts. The new Commercial Policy Tool Kit will attempt to drill down beneath the surface to find out the real impact of policies at the firm level.

The Commercial Policy Tool Kit should be based on several principles. The following system “requirements” are recommended:

- ☐ The Tool Kit will be *linked with the overall Commercial Policy Model*, already developed, and a proven tool for commercial policy analysis and benchmarking.
- ☐ The presentation format will be *“user-friendly” including graphics presentations*, similar to the Commercial Policy Model presentations. This approach has been proven to send clear messages and is often a powerful tool for persuasion.
- ☐ The Tool Kit will *“drill down” to specific operational detail* about how the current system works and its impact on business.
- ☐ The Tool Kit should *incorporate inputs from outside observers* in order to draw upon detailed knowledge as well as external objective viewpoints.
- ☐ The overall Tool Kit will not only diagnose specific problems with the current policy framework, but will also *propose specific solutions* for each case that a policy problem is identified.
- ☐ The Tool Kit should provide *replicable, comparable indicators* to measure both current status as well as changes over time.
- ☐ The Tool Kit will be responsive to *USAID’s needs for measuring performance results*.

II. THE FOUR STEPS OF COMMERCIAL POLICY TOOL KIT

Overview of the Commercial Policy Tool Kit

The Commercial Policy Tool Kit consists of four steps which progress from problem identification, to diagnosis and assessment, to seeking feasible solutions, to charting out a course of action. The four steps of the commercial policy tool kit are summarized in the following figure:

Step 1 provides a just-in-time assessment which involves in-country policy experts and reform players in the identification of the country's major commercial policy issues. For each key commercial problem area identified, Step 2 provides a "drill-down" assessment of the policy impact by applying rigorous analysis to a comprehensive checklist of policies and procedures. Step 3 focuses on finding feasible solutions to policy and procedural bottlenecks identified, and tailoring solutions to each country's unique circumstances. Finally, Step 4 translates recommendations into real policy and procedural changes by involving stakeholders in making difficult choices and implementing real changes. The methodology and results for each of the four steps is provided in the chart below.

COMMERCIAL POLICY TOOL KIT METHODOLOGY AND APPROACH				
Analytical Steps and Tasks	Step 1: Just-in-Time Diagnostic Assessment Task 1: Just-in-Time Policy System Checks Task 2: Troubleshooting for System Warning Signals	Step 2: Policy Impact Assessments Task 1: Conduct Stakeholder Interviews and Focus Groups Task 2: Perform Policy and Procedures Audit Task 3: Assess Impact of Policies and Procedures Task 4: Benchmark Policies and Procedures vis-a-vis Competitors and Best Practices	Step 3: Policy Tool Kit Application Task 1: Finding Solutions from the Tool Kit Task 2: Tailoring Solutions to Problem Areas	Step 4: Implementing Policy Solutions Task 1: Stakeholder Empowerment Task 2: Implementing Policy Change
Methodology and Processes	<ul style="list-style-type: none"> ■ Commercial Policy Model Scoring ■ In-country interview and workshops with panel of experts ■ Use of short questionnaire to gauge current policies, recent policy changes, and evidence of change 	<ul style="list-style-type: none"> ■ Stakeholder involvement through focus groups and interviews ■ Policy and procedures audit ■ Economic analysis of policy/procedure impact ■ International benchmarking ■ Case studies and best practice comparisons 	<ul style="list-style-type: none"> ■ Utilize international experience to identify change options ■ Work with stakeholders to tailor solutions and build support for change 	<ul style="list-style-type: none"> ■ Assemble key players in policy change ■ Make difficult choices, weighing risks against rewards ■ Involve stakeholders to commit to true change
Results and Deliverables	<ul style="list-style-type: none"> – Consensus opinion on major commercial policy problem areas – A policy web indicating warning signs for problem areas 	<ul style="list-style-type: none"> – Major policy and procedure bottlenecks identified – International comparison with benchmark countries – Case studies and best practices to indicate options for change 	<ul style="list-style-type: none"> – A set of feasible policy options to be considered by key policy players 	<ul style="list-style-type: none"> – Action strategy and implementation plan – Milestones to measure progress – In-country “policy champions” to implement changes

Step 1: Just-in-Time Diagnostic Assessment

Task 1: Just-in-Time Policy System Check. Under Task 1, the consultants will undertake a *Just-in-Time Policy System Check* of the commercial policy regime in a particular USAID-assisted country. This task will consist of a rapid assessment of the current policy environment for each of the nine key policy variables. This assessment will solicit the opinions of in-country policy experts and leaders on:

- ☐ the soundness of current policies;
- ☐ the recent direction of policy change; and
- ☐ how current policies compare with other countries' policies.

The purpose of the *Just-in-Time Policy System Check* is to determine in a robust, but streamlined fashion, which commercial policy variables are the most business-friendly and sound, as well as which ones are the most onerous and troublesome. This step will provide the Mission and the host country officials with an appraisal of which particular policy variables need fixing and fine-tuning. The diagnostic assessment from Step 1 will pinpoint the policy variables which require more in-depth assessments under Step 2 of the Commercial Policy Tool Kit.

Task 1 will be conducted through an in-country interview with a panel of experts. The panel will consist of 5-10 individuals from universities, think tanks, as well as senior representatives from business, labor, and government. Recommendations for selection of the panel participants will be solicited from USAID and its partner organizations.

A focus group meeting will be organized to gather the panel of experts in one location. The panel of experts will be given a short questionnaire (see Appendix) to fill out on the country's policy environment and recent changes. Once the questionnaires are completed, the panel will review their responses briefly with other panel members in the focus group setting. The purpose of this exercise will be to allow panelists to exchange information and to work toward a consensus viewpoint. Finally, the panelists will review their individual responses for consistency and make whatever adjustments they feel are warranted.

The focus group will result in a measurement of the country's performance in the nine commercial policy variable areas. Performance will be benchmarked against average and best practice developing country performance (see chart below).

**(Insert 4)
scoring chart**

Task 2: Troubleshooting for System Warning Signs. The results from the export panel questionnaire and discussions will be used to identify warning signs in a country's commercial policy system. The analysis will be summarized in a Policy Starburst (see below) which scores a country's nine key commercial policy area along individual vectors, on a scale of one to ten. The policy score in each vector will be determined by the current policy status (compared to average practices and international best practices), the observed direction of policy change, and the evidence of policy change.

The policy categories which receive a score of seven or above will be "cleared" by a green light, signaling that those policy areas are on the right track. Policy categories receiving scores of four to six will be given a yellow light, which means some policy problems are identified and fine tuning is required. Policy areas receiving a score of three and below will be placed in the red light zone, which is interpreted as major problems being encountered, requiring major serious policy diagnostics and adjustment.

For each of the policy variables identified in Step 1 which has a red light warning (score of 0-3), the contractor will proceed to Steps 2-4 to undertake a detailed Policy Assessment and Tool Kit Application. For those policy variables with yellow and green lights (scores of 4 and above) the Policy Tool Kit exercise will stop at Step 1, indicating that no further detailed assessment/corrective strategy will be required for those variables.

*(Insert 5)
starburst*

Step 2: Policy Impact Assessments

Under this step, the consultants will perform a detailed audit of the specific policies determined in Step 1 to be particularly burdensome to businesses, other groups, or the economy in general. The work to be undertaken in Step 2 is described here only in general terms -- for all the policy variables. However, in Section III below, a detailed “drill-down” scope of work is presented for each of the nine policy variables.

Principles and Best Practices

For each of the policy assessments the consultants will provide the latest thinking on principles and best practices for each of the nine policy variables. The principles highlighted are based on sound market economics axioms. The best practices are based on the lessons learned from recent success cases in policy reform for each policy category.

Task 1: Conduct Stakeholder Interviews and Focus Groups. Under this task, the consultants will solicit views from key stakeholders and focus groups on the major bottlenecks in the particular policy area being examined. Organizing focus groups for stakeholder has been a proven and efficient tool for diagnosing a problem, and for building “buy-in” for policy change. The stakeholder “buy-in” will become essential in order to successfully complete steps 3 and 4. Ultimately the stakeholders will become the champions of the actual reform process. The major stakeholders for each particular policy area are identified below in Section III of this report.

Task 2: Perform Policy and Procedures Audit. In this task the consultants will conduct an audit of policies and procedures in the particular area being evaluated. This audit will identify the aspects of policy and procedures which are the most problematic to businesses. The main laws and regulations related to each particular policy in typical developing countries are listed in the “drill down” scopes of work in Section III.

Task 3: Assess Impacts of Policies and Procedures on Businesses and the Economy. After the major policy bottlenecks have been identified in Task 2, the consultants will measure their impact on business costs and overall competitiveness. The consultants will estimate the impact of current policies and procedures, primarily from the firm’s point of view. The impact assessment will estimate time loss, cost impact, and other direct impacts of the current regulatory environment.

Task 4: Benchmark Policies and Procedures vis-a-vis Competitors and Best Practices. Under this task, the consultants will benchmark the country’s policies vis-a-vis competitors. Qualitative and quantitative indicators will be used for the benchmarking comparison. Case study examples will also be developed to compare local practices with “Best Practices” of other countries which have undergone reform in the policy area.

Step 3: Policy Tool Kit Application

Task 1: Finding Solutions from the Tool Kit. Under this task, the consultant team will identify a set of options for policy change for each of the policies that underwent a drill down assessment in Step 2. The solution options will come from the Tool Kit of Best Practices in international experience. Careful analysis will be made to ensure that the most appropriate solutions are identified to fit the specific needs of the particular country. Careful crafting of policy change options will be done to ensure that the changes are in line with the technical, developmental, legal and cultural context of the country.

Task 2: Tailoring Solutions to Problem Areas. In this task, the consultants will tailor the solution recommendations to fit the needs of stakeholder and the local business culture. No cookie cutter “off the shelf” policy solutions will be presented, only highly tailored ones which fit particular circumstances of the country. Experience has shown that the way in which solutions are packaged and tailored has a great deal of bearing on how well the recommendations for change are accepted by the stakeholders.

Step 4: Implementing Policy Solutions

Task 1: Stakeholder Empowerment. Under this task, stakeholders will be assembled in a Workshop setting to craft an action plan for policy reform in each of the policy areas that underwent a drill down exercise in Step 3. A policy reform path will be charted at the Workshop along the following lines:

- ❑ *Assemble key policymakers and organizations who "make things happen."* Our proposed strategy planning efforts will motivate key players to consider new ideas and push through "mind set" and organizational barriers.
- ❑ *Make difficult choices.* Countries earn global competitive leadership only through focused, confident moves and a willingness to take risks and ride out the resulting short-term upheaval in an uncertain environment. This task is among the most difficult because the natural tendency is to turn away from more daring, high-risk/high-reward options, and settle for the more comfortable status quo of incremental improvements on existing approaches. The consultants will assist policymakers in assessing the risk/reward tradeoffs to make those difficult choices. A sample policy reform options matrix for exporting is provided in the figure below.
- ❑ *Commit to action and true change.* The approach is to involve all stakeholders, including business, labor, government officials, and academic institutions in crafting a policy reform action strategy with specific objectives, responsibilities and time tables.

Task 2: Implementing Policy Change. The final task of the Commercial Policy Tool Kit consists of providing hands-on assistance to government agencies for implementing the needed policy and procedure changes. The consultants will assist ministries and agencies in refining legislation, drafting new regulations, and engineering policy implementation. In some cases, institutional changes will also be required including: refining mission statements, re-engineering procedures and systems, measuring performance, and adjusting incentive structures. This will be a focused activity, directed at the problem areas that have been identified in Step 2.

The purpose of the final task is to ensure that the action plans for policy reform developed earlier steps are being carried out, and that policy changes and improvements are actually undertaken. Specific policy changes and reforms will be undertaken for each of the problem areas identified.

III. POLICY IMPACT DRILL DOWNS

This section provides a drill-down scope of work under Step 2 (Policy Impact Assessments) for each of the following nine commercial policy categories:

- 1. Investment Policies**
- 2. Pricing Policies**
- 3. Import Policies**
- 4. Financial Sector Policies**
- 5. Exchange Rate Policies**
- 6. Labor Policies**
- 7. Tax Policies**
- 8. Export Policies**
- 9. Intellectual Property Rights**

1. Investment Policies

Principles and Best Practices

The competitive environment within developing countries to attract local and foreign investment has intensified over the past ten to fifteen years. Faced with scarcer inflows of external foreign aid and the failure of many state-owned companies, many developing countries have turned to foreign direct investment (FDI) for sources of capital, access to technology, and linkages to external markets. Investment is widely recognized as a primary catalyst of long-term, broad-based sustainable economic growth, and guaranteeing a steady flow of investment funds depends critically on a supportive policy and regulatory environment.

Many developing countries have adopted investment codes or other investment legislation with the intent of encouraging private investment, both domestic and foreign. The guarantees, rights, and incentives provided in these laws usually are intended to offset other distortions or dis-incentives to investment; if these distortions or dis-incentives did not exist no special investment code would be necessary. Most developing countries still find it necessary to have a code or law which provides guarantees, incentives, and basic rights to investors.

In the past the environment for private investment in many developing countries was much less hospitable than it is today. In the previous model, private investment, particularly in the industrial sector, was heavily screened, licensed, and monitored by government agencies. This approach led to the growth of large investment bureaucracies, whose staffs undertook extensive evaluations of projects. The responsible authorities would thoroughly screen investments for their desirability, their profitability, their impact on local producers, and other even less clearly-defined criteria. Obtaining approval through the maze of screening, paperwork, and other hurdles was often an arduous process.

The net effect of this approach was the discouragement of new investment, acceleration of capital flight, increased opportunities for corruption, and an overall bad and uncertain investment climate. Many developing country economies are still recovering from the effects that this type of investment policy, though many are now trying to counteract the impacts with newer, more progressive approaches.

As countries have attempted to reform their investment codes or laws over the last decade, most have done so with the objective of liberalizing restrictions, establishing clearer and more predictable “rules of the game,” and making investment regulations and incentives more automatic and less discretionary. There is no one formula for an investment law or code which can be universally applied to maximize investment. The macroeconomic environment, the specific policy objectives, as well as the country’s factor endowments, all play a role in determining the nature of a country’s investment regime.

It is possible, however, to note some general principles which should be applied by countries which are serious about attracting private investment.³ Investors generally seek a straightforward affirmation of their basic rights as investors. Along these lines, investors are usually expecting the following types of basic guarantees from an investment code:

- **Freedom to invest in and establish a firm:** Investors want minimum restrictions with regard to the sectors in which they may invest, and with regard to ownerships shares they might take within a firm.
- **Equal treatment:** In the past, some countries offered more favorable treatment to foreign investment, while others favored local investors over foreign ones. As a general rule, both local and foreign investors prefer a “level playing field” where neither group enjoys a legal advantage over the other. Ultimately the policy of equal treatment is the fairest one, and is the most defensible over the longer term.
- **Dispute settlement:** For foreign investors, the prospect of having only recourse to the local courts for settlement of disputes can be frightening. From the investors’ point of view, designation of a third party or neutral forum for dispute settlement is preferable. A number of options are available, including: the designation of foreign courts; arbitration under the rules of the International Arbitration Association; or multilateral fora, such as the International Center for the Settlement of Investment Disputes of the World Bank.
- **Guarantees about expropriation conditions:** Many investment codes, virtually all bilateral investment treaties, and most pertinent multilateral instruments contain provisions whereby countries may expropriate foreign investments, only if the takings are done *in accordance with legal procedures, for a public purpose, and against compensation*. Most investment treaties and international investors prefer a formula calling for prompt (without delay), adequate (fair market value), and effective (in the investor’s original currency) compensation in the event that expropriation occurs.

³See for example, the Multilateral Investment Guarantee Agency “Legal Framework for the Treatment of Foreign Investment” Volumes I and II, 1992 and “Facilitating Foreign Investment,” by Guy Pfeffermann, in Finance and Development, March 1992.

- **Foreign exchange controls:** Foreign investors generally avoid countries with restrictive foreign exchange controls because they strongly constrain firms' abilities to compete in competitive world markets. Restrictive foreign exchange controls can be counterproductive, as firms may respond by minimizing their use of foreign capital and relying more heavily on domestic sources of financing.
- **Dividend remittances and capital repatriation:** Limiting a firm's ability to repatriate its capital or remit dividends and profits deters foreign investment and encourages practices such as transfer pricing or licensing agreements that can often work to the disadvantage of host countries.
- **Personnel policies:** In the interest of promoting domestic employment, many countries restrict the use of expatriate personnel by foreign investors. To be viable, however, firms require experienced managers and technicians who may not be available in developing countries. Private firms prefer the flexibility to make their own hiring and firing decisions.

A checklist of the investor-friendly “Best Practices” that are considered conducive to investment is presented. In general, the same types of open, market-oriented policies that stimulate rapid export growth will also encourage investment. Numerous surveys have confirmed that the major inducements which attract prospective investors are policy stability and clear "rules of the game."

BEST PRACTICES IN INVESTMENT POLICIES

- **Permit unrestricted entry of foreign investment in general, limiting restrictions or screening to a short "negative list."**
- **Provide equal treatment between foreign and local investors.**
- **Guarantee repatriation of capital and remittances of profits.**
- **Establish clear "rules of the game" and make investment policy and regulations automatic and non-discretionary.**
- **Make company establishment procedures a simple registration process.**
- **Clearly define types of investment that will garner incentives and grant these automatically, minimizing negotiations.**
- **Avoid "deal making" with individual investors.**

Identification and Assessment of Major Bottlenecks in Investment Policy and Approval

Task 1: Conduct Stakeholder Interviews and Focus Groups. The consultants will solicit views from key stakeholders in interviews and focus groups on the major bottlenecks in the investment policy and approval process. Key stakeholders include the following groups:

- Investment promotion officials
- Private investors (both foreign and national)
- Law firms and accounting firms (firms specializing in incorporation and investment approval)
- Government agencies responsible for investment policy and approval such as such as the Ministries of Finance, Economy, or Planning (issues such as taxation, investment incentives, overall fiscal policies)
- The Ministry of Trade or Ministry of Industry: (investment and technology licencing and tariff policy, regulation, investment approvals)
- Office of Prime Minister or President: (in many countries the chief executive's office becomes heavily involved in the investment policy)
- International and non-governmental organizations (USAID, World Bank, IMF, UNDP, etc.)
- Industry Associations and Chambers of Commerce

Task 2: Perform Policy and Procedures Audit. The consultants will conduct an audit of policies and procedures with respect to investment. This audit will identify the aspects of investment policy and procedures which are the most problematic for businesses. The following is a master list of the main laws and regulations affecting investment in typical developing countries:

MAJOR INVESTMENT LAWS AND REGULATIONS			
<i>Investment Stage</i>	<i>Area of Concern</i>	<i>Specific Issues</i>	<i>Laws/Regulations</i>
Approval/ Start-up	Limits on Investment	Limits on amounts	Investment Code, Company Law
		Negative or positive list	Investment Code, Company Law
		Ownership limits	Investment Code, Joint Venture Law, Securities Law
	Approval	Time bound/no limits	Investment Code and Implementing Regulations
		Centralized/decentralized	Investment Code and Implementing Regulations
	Permits	Licenses	Sector Laws and Regulations, Building Code, Health Regulations
	Incentives	Sectors, conditions, limits	Investment Code, Export Processing Laws, Tax Law
Operations	Land	Conditions on access and ownership	Property Law, Constitutional Law, Municipal Laws
	Infrastructure	Access, rates	Municipal Regulations, Public Utility Regulations
	Repatriation/Transfer	Limits, conditions	Foreign Exchange Laws
	Accounting	Principles, standards	Company Law, Law on Accounting Standards
	Financing	Limits to access, collateral	Banking Law
	Monopoly	Competitive conditions	Antitrust law
	Franchising/Licensing	Restrictions on franchising, licensing agreements	Investment law, Company Law, Law on Franchising
	Selling/Divesting	Restrictions on divestiture	Investment Code, Securities Law, Company Law
	Liquidation/Bankruptcy	Conditions/obligations	Bankruptcy Law, Company Law
Guarantees/ Security	Dispute Settlement	Independence of arbitration forums	Investment Code, Multilateral Dispute Settlement (ICC, ICSID, Bilateral Investment Treaties)
	Standard Treatment for Investment	National or MFN, compensation for expropriation, transfers and convertibility	Investment Code, Bilateral Investment Treaties, Multilateral Investment Treaties
	Legal Procedures/Enforcement of Laws	Fairness, transparency, timeliness	Civil Procedure, Constitution
	Law and Order/Civil Strife	Security/risk	Criminal Laws

Task 3: Assess Impacts of Major Investment Policies and Procedures on Business. After the major policy and procedure bottlenecks have been identified, the consultants will assess their impact on business costs and competitiveness. The consultants will estimate the impact of current investment policies, regulations, and procedures from the firm's point of view. The impact assessment will estimate time loss, cost impact, and other direct impacts of the current regulatory framework.

The approval process is a critical hurdle for businesses and entrepreneurs since it is the initial step before a business can invest in new or expanded operations. Complicated investment approval requirements and a lengthy registration process delay start-up operations and discourage investment especially those with neither the money nor personnel to proceed through a circuitous screening process. A simpler, more automatic process that minimizes "red tape," discretion, and waiting time allows investors to quickly realize potential investment opportunities.

Task 4: Benchmark Investment Policies and Procedures vis-a-vis Competitors and Best Practices. Under this task, the consultants will also undertake a benchmarking comparison with "Best Practices" examples of market friendly policies from other developing countries. Case study comparisons will also be developed to describe other countries' experiences with policy and regulatory reform.

CASE STUDY COMPARISON WITH BEST PRACTICES IN INVESTMENT APPROVAL

The regulation and approval process in Côte d'Ivoire is so complicated and time consuming that it is considered to be serious barrier to entry for new investment. According to a recent study of the country's investment climate by SRI International and FIAS of the World Bank⁴, there are 60-70 pre-investment procedures that must be followed before investment approval can be granted, and obtaining a priority regime permit takes an average of two years.

This stands in sharp contrast to the 24 hour approval time to obtain similar clearance in countries such as Hong Kong. Côte d'Ivoire's investment approval process can be compared not only with African competitors, but with Hong Kong, which is considered an example of "best practice" in the area.

⁴"Diagnostic Report on the Climate for Foreign Investment in Côte d'Ivoire" by SRI International for FIAS, World Bank, 1995.

References

Multilateral Investment Guarantee Agency (MIGA), *Legal Framework for the Treatment of Foreign Investment, volumes I and II*, 1992.

Pfeffermann, Guy, *Facilitating Foreign Investment*, in Finance and Development, March 1992.

Shah, Anwar (ed.), *Fiscal Incentives for Investment and Innovation*, Oxford University Press, 1995.

SRI International, *Diagnostic Report on the Climate for Foreign Investment in Côte d'Ivoire*, prepared for FIAS (World Bank), 1995.

SRI International, *Framework for Investment Promotion in South Africa*, prepared for the Government of South Africa, 1995.

The International Finance Corporation (IFC) and FIAS of the World Bank, *Foreign Direct Investment: Lessons of Experience*, 1997.

2. Pricing Policies

Background

In the past, price controls on inputs and outputs were a major policy impediment to private sector investment and efficiency in many developing countries. Policymakers in many countries in Africa, Latin America, Eastern Europe and Asia put in place elaborate systems of government interventions through a combination of: price controls; subsidies; import tariffs, taxes, and monopoly marketing boards. Some of these interventions worked at cross purposes, but the usual net effect was lower production, reduced export earnings, welfare losses, and drains on government budgets.

Over the past decade or so, many developing countries have liberalized, or partially liberalized, the prices for most products. However, a large number of countries still maintain price controls in key “strategic product areas” such as basic food commodities, petroleum, and public utilities including electricity, telephone, water, and key transportation modes.

The political ramifications of price intervention are tremendous: Recently Indonesia’s rapid removal of price controls on food staples and petroleum products led to serious social and political protest, ultimately leading to the downfall of President Suharto. The implication of this experience is that once a government takes responsibility for controlling the price of key commodities, the beneficiary interest groups often expect the policy to continue in perpetuity. On the other hand, in situations where governments are not intervening in prices and local prices are forced to rise in response to world prices shocks or other disturbances, governments are not usually held accountable, and therefore the political fallout is much lower.

The underlying objectives behind price intervention vary from country to country, but usually involve some combination of the following:

- *Social Strategies.* Typically many of the products that face price controls are basic goods such as food, shelter, fuel, and electricity. Price controls on these items are often justified on social grounds, in that resources are supposedly transferred from wealthier classes of society to poorer ones. Unfortunately the subsidies are often poorly targeted: urban middle classes or even elites are often the prime beneficiaries, and poor rural farmers are often the biggest losers of pricing policy intervention.
- *Tax Revenue Enhancement.* Direct taxes, especially taxes on agricultural exports, are viewed as an important source of tax revenues. Export taxes are easy to collect and administer. Often these taxes are targeted at broadly dispersed and unorganized economic groups such as smallholder farmers.

- *Interest Group Politics.* Price intervention policies are used as instruments to meet the demands of different interest groups, and reflect the relative political power of respective groups. Due to the political power of urban groups, the prices of agricultural staples are often restrained at the expense of producers. Even in countries with outward-oriented development strategies, such as Thailand, food prices are kept low. While an economic objective can be found in most policies, the underlying reason for its implementation is often political.
- *Food Security.* For strategic reasons developing nations do not wish to be dependant on imported food. Nations are willing to pay large costs to achieve this strategic objective. Input subsidies to promote production, import protection for domestically produced foodstuffs, and government storage schemes are all used to achieve greater food security. While export crops are usually taxed, foodcrops are frequently subsidized.
- *Price Stability.* Many countries attempt to stabilize the prices of major agricultural and mineral commodities. Given the low incomes of many producers and consumers, governments feel that consumers and producers cannot afford to be the "shock absorbers" of world commodity markets. Accordingly, local prices are insulated from the variability of international markets, usually through a myriad of price and trade controls as well as consumer subsidies.
- *Control of Monopoly Pricing.* In many countries there are a number of government-legislated monopoly companies in product areas such as electricity, telephone, water, and transportation. In many developing countries, the regulatory framework is rudimentary, and therefore price controls are the principal instrument used to regulate monopolies.

Principles and Best Practices

- One of the key policy instruments affecting the efficient allocation of resources is *pricing policy*. Guaranteeing an adequate flow of raw materials to industry requires pricing policies that provide adequate incentives for suppliers. Artificially low prices that do not reflect the true value of inputs can be wasteful and costly to society, while overpriced inputs represent an excess cost to be borne by industry. Price controls on outputs usually result in shortages of outputs and under-investment in those product areas.
- Price controls are seen as an expedient method to contain inflation in the short run, but inevitably are ineffective and in many cases actually stimulate price rises, since they act to reduce the availability of supply and ultimately reduce production.

Therefore, the *gradual elimination of controls* is an important component of stabilization strategies

- *Price liberalization* involves policy actions aimed to make a country's trading system more *neutral*. Neutrality means that the product or sector is neither unduly taxed, nor unduly subsidized, in relation to other sectors and industries. Liberalization leads to the increasing adoption of market prices as signals to direct economic decisions. This indicates that local supply and demand conditions, in combination with international prices, are allowed to guide activities in investment, production, and trade.
- Ultimately the most effective means of balancing supply and demand and allocating resources is to allow the *market to determine price levels*. The long-run opportunity cost of a commodity is determined by the *border price* of that product. Border prices will optimize investment and production decisions. Market prices will also encourage the efficient use of substitutes in cases of rising world prices. Experience has shown that consumers and producers maximize their returns and welfare benefits under market price policies.
- In *competitive sectors*, market prices are essential for achieving efficiency. In *non-competitive sectors (such as natural monopolies)*, a *special regulatory framework* may have to be set up to provide oversight in order to protect the public from monopoly pricing and substandard services.
- One option for introducing competitive prices in natural monopolies is *privatization or deregulation* of those sectors. In Chile, the state-owned electricity generation and distribution utility was broken up into several smaller corporations, as a preliminary step towards its privatization. In another example, British Telecom, which had the authority to grant licenses under its telecommunications monopoly prior to its privatization, had these powers subsequently revoked.
- *Privatization of enterprises in noncompetitive sectors has yielded positive benefits* in developing countries including Chile, Malaysia and Mexico, where the policy environment was favorable and the government had the capacity to introduce or strengthen the regulatory framework.
- Another type of regulatory control is *antitrust legislation to reduce barriers to entry and encourage competition*. Antitrust legislation is used to protect consumers from monopolist behavior and to ensure that markets remain competitive and open to new entrants.

- Another form of sound regulatory oversight is the establishment of *special regulatory bodies*, such as the public service commissions which operate in each state in the United States. These regulatory commissions oversee utilities including gas, electricity, and the telephone companies. Profits made by these monopolies may be limited to a certain level of return on invested capital (e.g., 12 percent for most public utilities in the U.S.), or by linking the price of services to inflation (e.g., prices charged by the British Telecom). The regulatory bodies may also encourage cost reduction by allowing higher profits on the basis of declining operating costs (x-efficiency pricing).

Identification and Assessment of Major Bottlenecks in Pricing Policy

Task 1: Conduct Stakeholder Interviews and Focus Groups. Under this task, the consultants will solicit views from key stakeholders in interviews and focus groups on the major bottlenecks in pricing policy. Key stakeholders include:

- Firms from the industrial sector, agricultural sector, and from natural monopolies such as transportation, airports, ports, electricity, water, and telecommunications
- Industry associations and chambers of commerce
- Government regulatory bodies and oversight commissions such as the office of price controls, the electricity commission, the telecommunications commission, and the port commission.
- Consumer groups
- International donor associations (USAID, World Bank, and the IMF, etc.)

Task 2: Perform Policy and Procedures Audit. The consultants will conduct an audit of pricing policies and procedures. This audit will identify the aspects of pricing policy and procedures which are the most problematic to businesses. The following is a sample list of the main laws and regulations related to pricing policy in typical developing countries:

MAJOR LAWS, REGULATIONS, AND POLICIES INFLUENCING PRICES	
✓	Consumer price laws and regulations for consumer products including foods, shelter, and fuels
✓	Regulations or decrees fixing consumer or producer prices for commodities
✓	Regulatory laws and regulations concerning public utilities including electricity, telecommunications, water, and transportation
✓	Antitrust legislation and other regulatory legislation governing monopolies
✓	Direct and indirect taxes and border interventions influencing prices
✓	Government monopolies which influence prices of inputs or final products
✓	Government subsidies which influence market prices of inputs or final products
✓	Food aid agreements with international donor influencing food prices

Task 3: Assess Impacts of Major Pricing Policies and Procedures on the Economy. After the major pricing policy interventions have been identified, the consultants will measure their impact on consumer and producer surplus.

The consultants will use standard price intervention measures to assess the impact of price intervention on the economy. Four standard analytical measures used to indicate the extent and impact of price intervention are the following:

PRICE INTERVENTION MEASURES

- The gap between border and producer prices is called the *nominal rates of protection (NRP)*. Negative NRPs indicate that products are being taxed, while a positive NRP indicates that the producer is receiving more than the comparable international price, and as such is being protected or implicitly subsidized.
- *Effective Rates of Protection (ERPs)* are a more comprehensive measure of the level of protection. They measure the protection given to domestic value added of an activity taking into account the impact of all intervening prices of inputs and outputs. It is measured by the ratio of value added expressed in market prices to value added expressed in border prices.
- *Producer Subsidy Equivalents (PSEs)* sum in one parameter a wide variety of government interventions, including price, direct payments, and input subsidies and longer term interventions such as research, extension and promotional services. They represent the most broad measure of the effect of government interventions.
- The *Net Welfare Gains* resulting from price intervention can be estimated by summing the net consumer and producer surplus gains (or losses) resulting from price intervention. The *consumer's surplus* is the difference between what he/she actually pays at fixed controlled prices and what he/she is willing to pay under market prices. *Producer's surplus (or loss)* is the difference between what he/she earns at fixed prices compared with earnings at market prices.

Task 4: Benchmark Pricing Policies and Procedures vis-a-vis Competitors and Best Practices. Under this task, the consultants will provide case studies which will compare the country's experience vis-a-vis competitors, or Best Practices. A case study example of the effects of price intervention in agricultural inputs in African countries is provided below. The case study also includes a Best Practice example from Senegal illustrating the benefits of introducing private competition and market prices into the input supply system.

CASE STUDY EXAMPLE: AFRICAN PRICING POLICIES FOR AGRICULTURAL INPUTS

The effect of inappropriate pricing policies on overall production of inputs is well documented. During the 1970's and 1980's many African governments maintained artificially low and subsidized agricultural input prices. A majority of African governments monopolized agricultural input supply and distribution during this time period.

The motives for entering this field were similar to those advanced for government involvement in foodcrop marketing: inputs were seen as vital commodities that should not be left to the care of the private sector, which was regarded as exploitative and unreliable. African policymakers also perceived a need to subsidize the service, which provided further justification to them for monopolizing its distribution. Many African officials also believed that only by public distribution would inputs be made available to remote areas that private trade was assumed to neglect because of low profitability.

The performance of most African governments attempting to meet agricultural input distribution requirements was quite poor. Inputs were rarely available at the right time, at the right place, and in the right amounts when farmers needed them. Government agencies had trouble adapting bureaucratic, financial and administrative approval procedures to commercially-oriented operations. Government offices usually failed to buy inputs on time because their purchases were geared to the time of release of funds from the government budget.

Purchases were further constrained by the costs to the government of subsidizing inputs. Due to the budgetary constraints facing many African countries, the actual quantity of inputs purchased by governments remained far below the quantity demanded by farmers at the subsidized price. Paradoxically, the end result was that rather than supplying more farmers with inputs than under private trade conditions -- which was the purpose of the subsidy -- governments ended up serving considerably fewer.

As a result of this experience, most African countries eliminated government control of agricultural input distribution during the late 1980s. Subsidies were gradually eliminated and private traders have entered into input trade. Despite the elimination of subsidies, input use has actually risen in many countries. Competition has also introduced innovation. Senegal is an example of *Best Practice*, whereby competition in fertilizer trade brought innovation and overall cost savings, as the fertilizer nutrient content was matched more carefully to farmers needs, ineffective elements were removed, and transport costs were reduced through higher concentrations.

References

Kahn, Alfred, *The Economics of Regulation: Principles and Institutions*. Wiley, 1970.

SRI International, *Agricultural Policies for Liberalized Trade: Developing Country Experience, Lessons and Possible Reforms*, August 1989.

SRI International, *Papua New Guinea Commodity Stabilization Study*, prepared for the Asian Development Bank and the Government of Papua New Guinea, December 1990.

World Bank, *Argentina Reforms for Price Stability and Growth*, a World Bank Country Study, 1990.

World Bank, *Methodologies for Measuring Agricultural Price Intervention Effects*, World Bank Staff Working Paper Number 394, June 1980.

3. Import Policies

Principles and Best Practices

Standard economic theory holds that the best trade regime is one in which exports and imports are allowed to cross borders freely with no restrictions. While political and economic pressures usually prevent countries from unilaterally dropping all restrictions to the free flow of goods and services, many countries are moving in the direction of free trade, particularly as the world's economies are becoming more integrated and companies find that their competitiveness depends on a guaranteed flow of often imported intermediate products at competitive prices.

Increasingly, achieving a liberal trade regime requires more than low tariffs and minimal quotas. Protectionism can also be found in countries customs valuation practices, phytosanitary standards, or import licensing requirements, to name but a few. Within this context, the field of trade policy is becoming an increasingly more complicated environment, even if the ultimate goal of achieving a free flow of goods and services remains the same.

Since the establishment of the General Agreement on Tariffs and Trade (GATT) in the late 1940s, even as countries have swung between protectionist and open policies, there has been an almost unanimous recognition that sound trade regimes should conform to the following principles:

- ***Most-favored-nation (MFN):*** This principle states that no trading partner should be treated less favorably than any other. This is a fundamental principle of the World Trade Organization (WTO), which regulates international trading rules. All WTO signatories are required to confer MFN status to all other member states.
- ***National treatment:*** This principle stipulates that foreign products should be treated as favorably as domestic products once they crossed the border. This also is a fundamental principle of the WTO.
- ***Transparency:*** Transparency allows producers and consumers to be aware of the rules regulating trade, therefore allowing individuals to make commercial decisions according to their best interests.
- ***“Centralization” of Trade Policy:*** Trade policy should be set according to its impact on the economy as a whole. As much as possible, trade policy should be set by a national government body with economy-wide responsibility, not by ministries with sectoral responsibilities or by state/local governments.
- ***“Binding” of Trade and Related Policies:*** One of the critical features of a policy regime is consistency. As governments worldwide seek to liberalize their regimes, the

most important thing they can do to gain the credibility of local importers and foreign investors is to bind their tariffs and related policies by joining an international organization such as WTO, the European Union or NAFTA. Such public international commitments make policies less subject to special interest pressures, particularly in times of crisis.

Increasingly, countries seeking to improve their import policy regimes consider that joining the WTO is the first step toward establishing a competitive environment. While joining WTO is certainly a good step to take, WTO rules should be seen as a common denominator among countries with diverse trade practices, rather than as the standard for best practices in import policies. The following box illustrating best practices in import policies is comprised of policies and procedures that often go beyond current WTO requirements.

BEST PRACTICES IN IMPORT POLICY AND PROCEDURES

Tariff and other duties and charges

- **Unified tariffs, duties and charges under one schedule**
- **Few tariff rates (3 to 5)**
- **Keep tariffs as low as possible (0 to 20 percent range), but in case of political pressure for protection, use this tool rather than any other**

Quotas

- **Convert quotas into tariffs**
- **If quotas exist, quota holders should be free to choose sources of imports**

Import licensing

- **Phase-out import licensing**
- **If licensing exists, rules and procedures should be clearly stated and published**

BEST PRACTICES IN IMPORT POLICY AND PROCEDURES (CONTINUED)

Customs classification, valuation and pre-shipment inspection

- **Classification should be done through Harmonized Commodity Description and Coding system (HS), which reduces need for reclassification and facilitates computerization of customs formalities**
- **Valuation to be based on the transaction or invoice value of good subject to adjustments for freight, commission and brokerage fees, and cost of packaging and containers, unless buyer and seller are related**
- **Importers should have right to appeal a value determination**
- **If valuation is delayed, importer should be allowed to withdraw goods upon a bond or deposit guarantee for custom duties/fees.**

- Use of private, specialized firms to inspect goods prior to shipping for administratively weak countries and to guarantee there is no over/under-invoicing
- User fees directly related to cost of services
- All laws, regulations and ruling applying to classification/valuation/inspection should be published

Technical regulations and standards

- As much as possible, use of international standards such as ISO 9000 (or FDA/EPA)
- Enquiry points available for information on standards
- One set of national standards, without more restrictive regional/local ones
- Should not be more restrictive than necessary to fulfill legitimate objectives of national security, prevention of deceptive practices, protection of health, safety, and the environment
- Conformity procedures should be expedient and confidential
- Countries should accept results of conformity assessment of trading partners, particularly if they have the same standards
- Countries should have an enquiry point, and publish all regulations and changes to them in as many languages as possible

Sanitary and phytosanitary measures

- Standards should be based on scientific principles and according to international conventions
- Importers should have right to appeal rulings and regulations

State trading

- State-trading, or the granting of exclusive importing rights should be phased-out
- If politically necessary, all state-trading should be done on commercial considerations, with margins published for the public

Trade in services

- No limitations on number of service suppliers allowed, value of transactions/assets, total quantity of service output, type of legal entity through which service supplier is permitted to supply services, share of equity ownership of a foreign investor, etc.
- Recognition of licenses, education and/or experience from other countries, based on multilaterally agreed criteria

Identification and Assessment of Major Bottlenecks for Imports

Task 1: Conduct stakeholder interviews and focus groups. Consultants will solicit views from key stakeholders through interviews and focus groups to examine key policies and procedures that restrict the flow of imports. Particular attention will be paid to import restrictions that difficult the production of final goods and undermine a country's competitiveness. Key stakeholders could include the following:

- Major local importers
- Foreign investors
- SME representatives
- Broad business associations
- Customs officials
- Central bank officials
- Trade zone officials and operators
- Tax administration officials
- Analysts from international accounting houses
- Freight forwarders
- Port and airport officials and operators
- USAID officials

Task 2: Perform policy and procedures audit. The consultants will conduct a policy and procedures audit to identify the most problematic aspects of the country's import regime, particularly from the view of the private investor. The import regime "auditors" will use a checklist of policies and procedures based on international best practices to identify major bottlenecks and critical policy issues. For countries not yet part of WTO, or currently undergoing negotiating admittance, this process could serve a critical fact-finding function for WTO entrance preparations. This list will be used during stakeholder interviews and focus groups.

A sample checklist follows:

CHECKLIST FOR IMPORT POLICY AND PROCEDURES AUDIT	
<i>Tariffs and Quotas</i>	
<input type="checkbox"/>	Are tariffs unified?
<input type="checkbox"/>	What are the tariff schedules?
<input type="checkbox"/>	What are the WTO-bound rates?
<input type="checkbox"/>	How are quotas administered?
<input type="checkbox"/>	Are importers free to choose source of goods?
<i>Import Licensing</i>	
<input type="checkbox"/>	What are they being used for? Number of items requiring licenses.
<input type="checkbox"/>	Are license requirements published?

- ☐ Is there a one-stop-shop?
- ☐ What are the reasons for rejected applications?
- ☐ How long does it take to get the license and how long does it last for?
- ☐ Are goods with a license ever refused entrance at port of entry? Why and how often?

Customs Classification, Valuation and Pre-shipment Inspection

- ☐ Is the Harmonized System in use?
- ☐ What price is used for valuation?
- ☐ Are there appeal channels for valuation disputes?
- ☐ What happens if valuation is delayed?
- ☐ Are private firms used for valuation/classification/inspection at any point?
- ☐ Are user fees levied, and, if so, how are they determined?
- ☐ How accessible and clear are all relevant laws, regulations and rulings to new importers?

Technical Regulations and Standards

- ☐ How are standards determined? Are there separate national/regional/local standards?
- ☐ Where are standards published?
- ☐ Are there reciprocity agreements with other nations?

Sanitary and Phytosanitary Measures

- ☐ How are measures set?
- ☐ Is there a channel for appeal?

State Trading

- ☐ Are exclusive importing rights granted? State trading companies?
- ☐ For state trading companies, are their margins and operations available to the public?

Trade in Services

- ☐ Are there limitations on the provision of services by foreign companies?
- ☐ Are foreign licenses, education and experience recognized domestically?

As part of the task, consultants will compile all relevant laws and regulations shaping the country's export regime, including:

- ✓ Tariffs
- ✓ Customs Code and administration regulations
- ✓ WTO commitment and other multilateral/bilateral agreements
- ✓ FTZ laws
- ✓ Port/airport regulation laws
- ✓ Sanitary and phytosanitary regulations
- ✓ Regulations on standards and technical stipulations

Task 3: Assess impact of major policy and procedures on business costs and overall competitiveness. After the major policy/regulatory bottlenecks and critical issues have been identified, the consultants will assess their impact on business costs and overall competitiveness. Consultants will gauge direct and indirect impacts in terms of time, money, or other relevant measurement.

For example, if through interviews and focus groups the consultants find that there are important tariff “peaks” that significantly raise import costs for important products, the consultants will identify such tariff peaks, identify the products affected, quantify the annual costs that one or several peaks inflict on current importers, and the assess the impact of their removal on other importers.

EXAMPLE ASSESSMENT: BRAZILIAN IMPORT TARIFFS AND TAXES

Upon signing the Mercosur (Common Market of the South) trade agreement, Brazil reformed its import tariffs so that they now range between 0 and 20 percent of the C.I.F. price of goods. Importers point out, however, that the effective cost of importing is much higher than that stated by the tariff.

By looking at Brazil's laws and regulations, and studying their application, the consultants would find the following other charges:

- Union fee of 2.2 percent of C.I.F. value
- Brokerage fee of 1.0 percent of C.I.F. value
- Warehouse tax of 1.0 percent of import duty
- Fee for Handling Charges which varies according to value of product from \$20 to \$100
- Administration Commission fixed at \$50
- Import License Fee of approximately \$100
- Additional Port Tax, which comprise two fees totaling 3 percent of C.I.F. value
- Merchant Marine Renewal Tax of 25 percent of ocean freight charges on imports by sea

When the Manufactured Products Tax and the Value Added Tax are added to these taxes and fees, the consultants would find that the real cost of importing a good, without including freight and insurance charges, is between 60 and 70 percent of the value of the good.

The consulting team would also make a general assessment of how these costs affect the country's general commercial policy environment, particularly as they relate to the performance of the private sector.

Task 4: Benchmark against competitors and international best practices in critical areas.

This task will consist of selecting appropriate competitor and best-practice countries to compare standards in bottlenecks/problem areas. Benchmarking has proven to be a powerful tool for critically assessing a country's performance against international standards. In selecting benchmark countries, efforts will be made to identify countries with similar levels of development, countries in direct competition for investment dollars, as well as best practice ("benchmark") nations. In this way, client countries will be able to identify challenging but realistic goals to meet.

EXAMPLE BENCHMARK

Following the Brazil case from above, the consulting team would benchmark Brazil against best practice countries and competitors in the following areas:

- Number of fees/taxes
- Tax rates and total fees payable
- Effective tariff
- Clarity of fees and taxes and availability of information on charges
- Tariff/taxes/fees consistency over time

References

Hoekman, Bernard M. *Trade Laws and Institutions*. Washington, DC: The World Bank, 1995.

Hoekman, Bernard; Sauve, Pierre. *Liberalizing Trade in Services*. Washington, DC: The World Bank, 1994.

Keesing, Donald B. *Improving Trade Policy Reviews in the World Trade Organization*. Washington, DC: Institute for International Economics, 1997.

Martin, Will; Winters, Alan L. (eds.) *The Uruguay Round and the Developing Economies*. Washington, DC: The World Bank, 1995.

Schott, Jeffrey. *WTO 2000: Setting the Course for World Trade*. Washington, DC: Institute for International Economics, 1996.

4. Financial Sector Policies

Background

Financial systems play a critically important role in the activities of all economies. These systems carry out the important functions of clearing the exchange of goods and services, and administering the aggregation and allocation of financial resources. Without some form of a capital and credit markets, societies would be limited to little more than barter economies. Financial sectors form the “circulatory systems” of and among, agricultural, manufacturing and service sectors.

Financial institutions represent the organizational nucleus of capital and money markets and provide several essential services. Banks and other financial institutions (savings and loan associations, brokerage houses, insurance companies, leasing firms, etc.) provide the public with a means to save for the future and to borrow to meet current financial needs. These organizations are the only way in which thousands of small investments from one set of “clients” can be transformed into short- and long-term loans to fund the productive ventures of other sets of “clients.”

One of the key constraints to accelerated economic performance in developing countries is the absence of strong, dynamic financial systems. Healthy capital and credit markets serve the vital functions of attracting savings, intermediating funds, and allocating credit to productive uses. Development practitioners are unanimous in their identification of capital formation as one of the most important components in the development process.

The recent events in Asian countries such as Thailand, Indonesia, Korea, and Malaysia demonstrate how important sound financial sectors’ policies are to the economic and political stability of a country. Financial instability can lead to massive crises of confidence, capital flight, collapse of the stock market, and a run on the domestic currency, among other problems. Proper management of emerging financial distress signals is becoming an increasingly critical prerequisite for short- and long-term economic stability and growth.

The onslaught of a protracted financial crisis throughout many Asian countries has directed some attention toward the critical importance of capital market development and management, but has concentrated primarily in efforts aiming to improve nations’ external accounts and ability to meet their international debt-servicing obligations. Relatively limited energies have been expended in designing and implementing systematic reforms oriented toward increasing domestic capital formation and intermediation.

Principles and Best Practices

Capital market development depends on the introduction of sound macroeconomic and financial sector policies. High and variable inflation, negative interest rates, and overvalued exchange rates are an anathema to the development of financial markets. Other common policies in developing countries which hinder growth in capital markets include unenforced contract law (thereby allowing borrowers who fail to repay their obligations to evade retribution) and weak bank regulation and supervision. Until these obstacles are removed, little else can be done to improve the functioning of capital markets.

The capacity of financial institutions to carry out their responsibilities efficiently and profitably is a function of many factors, including overall economic conditions, government policies and regulations, and forms of ownership and management control. A standard set of financial sector policies which has proved successful in achieving capital market stability and growth includes the following:

BEST PRACTICES FOR CAPITAL MARKETS DEVELOPMENT

- ***Improve Fiscal Balance.*** Governments must seek to balance their books by reducing spending. In addition to cutting expenditures, government authorities need to seek new sources of tax revenue. In many cases, tax collection system can be improved to capture higher percentages of direct taxes incurred but not paid, but rate increases are also often necessary.
- ***Control Money Supply Growth.*** Financial instability is combated by restricting the expansion of monetary aggregates. Money supply growth should be in line with the underlying real growth of the economy.
- ***Maintain Competitive Exchange Rates.*** Exchange rates must be at competitive levels to discourage capital flight, and to efficiently encourage exports and import substitution. An exchange rate policy that maintains a competitive rate by adjusting the rate with inflation levels should be implemented.
- ***Sequence Reforms Appropriately.*** The sequencing of macroeconomic reforms is a critical issue. The general consensus among policymakers and economists is that controls on the flow of goods should be lifted first, and then restrictions on the flow of money across borders should be removed.
- ***Remove Interest Rate Ceilings.*** Interest rates represent the cost of funds to holders and users, and are the most powerful determinants of saving and borrowing. Ceilings often result in negative rates of interest, which deter saving and borrowing. The removal of such ceilings reduces or eliminates biases against capital market deepening.
- ***Maintain Positive Real Interest Rates.*** The conventional wisdom of the past was that interest rate ceilings were necessary to contain inflationary pressures. The actual experiences of success cases proves the converse: that is, rates which reflect the true cost of money (i.e., relatively high rates) lead to the suppression of inflation, greater saving, and allocation of credit to its most productive uses.

- *Abolish Barriers to Entry for Private Banks.* Many financial systems are essentially closed to new entrants, which protects existing firms and allows them to operate inefficiently. Through the provision of market access to new banks, competitive forces are introduced and market participants can turn to new sources of funds and financial services.
- *Standardize Bank Reporting Guidelines.* Very often excessive regulation is seen as an antidote to the lack of proper financial reporting by banking and non-banking firms. This problem can be addressed by a movement towards transparency and public access to financial records.
- *Allow Unprofitable Banks to Fail, But Protect Depositors.* A major dilemma facing all bank regulators is the decision to permit financial institutions to fail. While most absolute bankruptcies can be avoided through mergers and acquisitions, the prospects of possible bankruptcies sends strong messages to lethargic bank managers and to depositors.

Task 1: Conduct Stakeholder Interviews and Focus Groups. The consultants will solicit views from key stakeholders in interviews and focus groups on the major constraints and bottlenecks in the financial markets. The participants in the money and capital markets include a wide range of official and private institutions, each of which plays a role in the processes of capital formation and allocation. The specific mix of institutional actors varies considerably by country, but typically consists of the following institutions:

- Individual investors and borrowers
- Corporate investors and borrowers
- Government participants (central banks, finance ministries, regulatory and supervisory agencies, and pension funds and other government operated financial institutions)
- Commercial banks
- Investment or merchant banks
- Savings and loans associations
- Stock exchanges and brokerage houses
- Mutual fund companies
- Insurance companies
- Institutional investors
- Venture capital companies
- Leasing companies
- Factoring firms

Task 2: Perform Audit of Financial Policies. The consultants will conduct an audit of financial sector policies. This audit will identify the aspects of financial sector policy which are the most problematic to capital markets development.

Unlike economic factors, which at least in the near term must be taken as given realities, policy variables can be changed by governments. While policy frameworks are in part based on underlying and social conditions, they can also serve as a catalyst for financial sector growth. A checklist for the financial policy audit is provided below:

CHECKLIST FOR FINANCIAL SECTOR POLICY AUDIT

Assess financial sector's breadth and efficiency

- ☐ The types of financial institutions
- ☐ Range of services and products
- ☐ The extent of usage of the formal financial system by both savers and borrowers
- ☐ The size of the informal sector

Government policies

- ☐ The growth of the money supply
- ☐ Policies for constraining inflation
- ☐ Fiscal balances and policies
- ☐ Extent of interest rate ceilings and controls
- ☐ The effect of exchange rate policies and controls
- ☐ Taxation policies for financial transactions
- ☐ Conditions (obligations) for purchasing government securities
- ☐ Contract enforcement

Structure of the financial system

- ☐ Government regulations limiting the number of financial institutions and their range of services
- ☐ The degree of competition
- ☐ The extent of government ownership
- ☐ Identify the number of institutions in important niches

Banking system regulation

- ☐ Barriers to entry in bank ownership
- ☐ Portfolio allocation rules
- ☐ Percentage of credit that is directed by government
- ☐ The existence of excessive reserve requirements
- ☐ Bank reporting requirements
- ☐ Bank failure policies and regulations
- ☐ Legal penalties and enforcement mechanisms for loan defaults

Task 3: Assess Impacts of Major Financial Sector Policies: Once the major financial sector variables have been identified, the consultants will assess their impact on capital markets formation and on business development. Some examples of unsound financial sector policies and their typical impact on capital markets in developing countries are provided below:

IMPACT OF UNSOUND FINANCIAL SECTOR POLICIES

- *Heavy direct and indirect government involvement*, intervention and ownership constrain the private sector from participating in formal markets and from establishing financial service firms.
- *Inappropriate exchange rate policies*, especially in the maintenance of overvalued exchange rates, lead to distorted lending decisions, financial remittance restrictions, and capital flight.
- *Mandated interest rate ceilings* on deposits and loans stifle capital market formation, since savers often receive negative real interest rates on their deposits.
- *Credit allocation directives* decrease the flexibility of banks to seek profitable loan opportunities, and often increase the odds for non-performing loans.
- *Portfolio selection restrictions* in secondary markets limit the range of investment alternatives available.
- *Direct or hidden taxation of financial transactions* raises the costs of borrowing and reduces returns on capital employed.
- *Required purchases of government securities* force financial institutions to fund government indebtedness, often at unprofitable terms, and crowd out private borrowing.
- *Barriers to entry and regulated limits to banking competition* reinforce inefficient institutions and raise transactions costs to participants.
- *Inefficient, cumbersome legal systems* make contract enforcement difficult, and seriously impede efforts by financial institutions to collect overdue payments.

Task 4: Benchmarking Financial Sector Policies vis-a-vis Competitors and Best Practice:

Under this task, the consultants will undertake a benchmarking comparison with “Best Practices.” Case studies on financial sector policy reform will be developed to demonstrate the impact of reform, and document how the countries were able to implement the new policies. Best Practices in interest rate deregulation are provided below:

BEST PRACTICES IN INTEREST RATE DEREGULATION

Conventional wisdom in the past was that interest rate ceilings were needed to contain inflationary pressures. The actual experiences of Taiwan, Turkey and other countries indicate the opposite: that rates reflecting the true cost of money lead to a suppression of inflation. In the five-year period following interest rate deregulation in Taiwan, the rate of inflation dropped from 25 percent to 5 percent per annum.

Financial markets were also deepened in countries which shifted to positive real rates of interest. With negative real interest rates, investors faced a negative return on capital for local assets. They naturally turned to offshore opportunities where investment returns were higher. When countries introduced higher real interest rates, money returned to the local economy, and the depth of the financial markets also increased. For example, Chile saw a rise in the most widely used indicator (the ratio of M2 -- a broad monetary aggregate -- to GDP) from 15 to 25 percent of GDP in the decade following interest rate deregulation. In Bangladesh, this indicator of

financial deepening grew from 20 to 25 percent of GDP in the five-year period following deregulation.

References

Caprio, Gerald et al, *Financial Reform Theory and Practice*, Cambridge University, 1994.

Economic Development Institute of the World Bank, *Financial Sector Reforms, Economic Growth and Stability, Volumes I and II*, 1994.

The World Bank, *Financial Sector Reform: A Review of World Bank Assistance*, March 1998.

SRI International, *Reforming Financial Systems: Policy Change and Privatization*, Greenwood Press, 1991.

5. Exchange Rate Policies

Principles and Best Practices

A country's exchange regime and the its currency's exchange rates have profound impacts on its export competitiveness and access to international capital. The exchange rate determines the cost of a country's imports and exports, as well as the cost and availability of capital. Methods of determining the exchange rate vary by country and are distinguished by their degree of flexibility. The most prevalent regimes are:

- Basically fixed regimes, with exchange rates pegged to single currency or a currency basket, usually within pre-established margins. Some countries maintain a fixed but adjustable peg.
- Basically flexible regime, which includes independent float (determined by market forces), managed float (frequent adjustments based on indicators such as reserves and payments positions), or automatic currency adjustments based on selected indicators.

The selection of an appropriate exchange system cannot be based on a "one size fits all" principle.⁵ Exchange rate policy and system depend on both nature of a country's economy and the constraints on domestic economic policy. Often, the choice of a particular regime over another is not so important as the maintenance of an appropriately valued and stable real exchange rate. Experience shows that best practice usually involves:

BEST PRACTICES IN EXCHANGE RATE MANAGEMENT

- **A stable real exchange rate *vis-a-vis* major trading partners.**
- **Maintaining equilibrium in the overall balance of payments.**
- **Keeping a stable and sufficient level of foreign exchange reserves.**
- **In countries where exchange rates have been fixed, relative to a single reserve currency, the effective use of currency boards has been credited for maintaining stable real exchange rates.**

⁵Barth and others (1994), page 287.

--

Exchange rate misalignment remains a serious problem among a number of developing countries. Recent financial turmoil and currency devaluations in a number of South East Asian countries demonstrated the importance of maintaining an appropriate exchange rate for overall economic stability. Studies by the World Bank have found that on average, countries with misaligned real exchange rates exhibit poorer growth performance than countries with appropriately valued ones.⁶ Undervalued currencies, while rendering a country's exports more competitive, simultaneously make imported capital excessively expensive and can restrict an enterprise's ability to import essential inputs. Conversely, an overvalued exchange rate can lead to a dwindling of foreign exchange and capital flight. Among developing countries, overvalued exchange rates are more prevalent than undervalued ones.

Much of the focus on exchange regimes has been on exchange rates and exchange systems. However, equally important is a country's administration of its exchange regime in practice. A simple, transparent system of conversion allows exporters, importers, and investors access to foreign exchange to facilitate their business transactions. Based on international experience, an efficient and effective foreign exchange administration system should have the following characteristics:

EFFECTIVE FOREIGN EXCHANGE ADMINISTRATION PRINCIPLES

- **Simple/seamless conversion process.**
- **If conditions must be met before the release of foreign exchange, they should be transparent and the consistently applied.**
- **Minimal conversion time. In some countries, it may take up to months or years for the release of foreign exchange, particularly for the repatriation of profits or capital to foreign investors.**

This exchange policy assessment will examine issues beyond the exchange system and exchange rates to include the institutions, procedures and controls involved in the administration of the exchange regime. The objective is to identify and assess the bottlenecks in the exchange system, and their impact on business costs and overall competitiveness.

Identification and Assessment of Major Bottlenecks in the Exchange System

⁶Edwards (1988).

Task 1: Conduct Stakeholder Interviews and Focus Groups. In line with USAID's new management orientation which takes a client focus, the consultants will solicit views from key stakeholders in interviews and focus groups on the major bottlenecks in the exchange system. Key stakeholders may include the following groups:

- central bank
- exporters and importers
- international investors
- commercial banks and other financial institutions which administer exchange transactions
- foreign investment authorities
- securities exchange authorities
- USAID officials
- IMF and World Bank officials who monitor the country's exchange system

Task 2: Perform Policy and Procedures Audit. The consultants will conduct a policy and procedure audit to identify aspects of the exchange regime which are the most problematic for businesses. The consultants will first undertake a compilation of existing laws and regulations which govern the exchange regime. These include:

- ✓ Foreign exchange law and regulations
- ✓ Investment code
- ✓ Banking laws
- ✓ Companies Act
- ✓ Import/export laws
- ✓ Central bank regulations

The consultants will then use a checklist of exchange policies and procedures to identify major bottlenecks. The purpose of the checklist is to ensure a comprehensive coverage of policies, institutions and procedures within the exchange regime. This checklist will be used in a comprehensive review of the exchange system and procedures, and utilized in stakeholder interviews and focus groups. A sample policy/procedure checklist is presented below:

CHECKLIST OF EXCHANGE RATE POLICIES AND PROCEDURES

Exchange Arrangement

- ◆ Exchange rate structure (free float, management float, pegged, etc.)
- ◆ Exchange tax or subsidy (yes/no)

Exchange Rate Alignment

- ◆ Measure the nominal and effective appreciation of the currency over time.
- ◆ Exchange rate (appropriate, overvalued, or undervalued)
- ◆ Rate fluctuations (minimum, moderate, high) – does it create excessive uncertainties?
- ◆ Foreign exchange reserves (months of import coverage) – document foreign exchange reserves levels over time.

Resident and Non-Resident Accounts

- ◆ Eligibility to hold accounts (judicial/natural persons)
- ◆ Foreign exchange accounts permitted, held domestically or abroad (yes/no)
- ◆ Accounts in domestic currency convertible into foreign currency (yes/no)
- ◆ Domestic currency accounts permitted for non-residents (yes/no)
- ◆ Are these restrictions considered major barriers for domestic businesses and foreign investors? (yes/no)

Imports Payment Restrictions

- ◆ Foreign exchange budget (yes/no)
- ◆ Financing requirements for imports
- ◆ Documentation requirements of release of foreign exchange for imports (minimal, moderate, onerous)
- ◆ Import licenses and other non-tariff measures: negative list, open general licenses, licenses with quotas (yes/no)
- ◆ Import taxes and/or tariffs collected through the exchange system (yes/no)
- ◆ Are existing import payment restrictions a major problem for importers/investors? (yes/no)
- ◆ Which are the key institutions involved in these transactions?

Requirements/Restrictions for Exports Proceeds

- ◆ Repatriation requirements (yes/no)
- ◆ Surrender requirements (yes/no)
- ◆ Documentation requirements
- ◆ Export licenses needed (yes/no), quotas for licences (yes/no)
- ◆ Export taxes (yes/no)
- ◆ Are existing requirements on export proceeds a major problem for exporters?
- ◆ Which are the key institutions involved in these transactions?

CHECKLIST OF EXCHANGE RATE POLICIES AND PROCEDURES (CONTINUED)

Controls on Payments and Proceeds for Invisible Transactions and Current Transfers

◆	Interest payments (yes/no)
◆	Profit/dividend payments (yes/no)
◆	Repatriation requirements for profits (yes/no)
◆	Repatriation requirements for capital (yes/no)
◆	Surrender requirements (yes/no)
◆	Restrictions on use of funds (yes/no)
◆	Are these controls a problem for businesses, especially foreign investors? If so, which ones are the most problematic?
<i>Controls on Capital Transactions</i>	
◆	Controls on market securities, money market instruments, collective investment securities, derivatives and other instruments
□	Purchase locally by nonresidents (yes/no)
□	Sale or issue locally by nonresidents (yes/no)
□	Purchase abroad by residents (yes/no)
□	Sale or issue abroad by residents (yes/no)
□	Are any of them serious barriers to obtaining investment capital?
◆	Are any controls on commercial credits, financial credits, guarantees, and financial backup facilities, by residents to nonresidents, or to residents by nonresidents, barriers to obtaining investment capital?
◆	Are there any controls on liquidation of direct investments? Are they considered serious barriers to direct foreign investment?
◆	Controls on real estate transactions, purchase or sale locally by nonresidents? Are they considered barriers to foreign direct investment?
◆	Restrictions on commercial banks and other credit institutions on
□	Borrowing abroad
□	Maintaining accounts abroad
□	Lending to nonresidents/financial or commercial credits
□	Lending locally in foreign exchange
□	Purchase locally issued securities denominated in foreign exchange
□	Open foreign exchange position limits
□	Are any of these restrictions serious barriers to obtaining investment capital?

Task 3: Assess Impacts of Major Policy and Procedures Bottlenecks on Business Costs and Overall Competitiveness. After the major policy and procedure bottlenecks have been identified, the consultants will assess their impact on business costs and overall competitiveness. To the extent possible, the impacts of the bottlenecks will be quantified, either in the cost of time or money.

For example, if the release of foreign exchange to finance an import transaction is viewed as a major problem to businesses, the consultants may identify the number of days and the procedures required to complete the transaction, pinpoint specific bottleneck areas, and estimate their costs to businesses. Or if the release of foreign exchange for the repatriation of profits or capital is a problem, the consultants will document the length of time for blocked dividends or capital.

For many developing countries, a number of procedural requirements for exchange transactions have been created to ration foreign exchange as a result of shortages. Foreign exchange shortages typically stem from an overvalued exchange rate, which is fundamentally related to the exchange system, particularly how the exchange rate is determined and maintained. In addition to assessing the procedural and transactions aspects of foreign exchange, the consultants will examine the underlying foreign exchange system and link it to the procedural bottlenecks identified.

Task 4: Benchmark Against Competitors and International Best Practices in Major Bottleneck Areas. The consultant will select competitor and appropriate benchmark countries to compare performances in major bottleneck areas. International comparisons and benchmarking have proven to be powerful tools to place countries objectively against competitors and international experiences and standards. The consultants will develop and present best practices and case study comparisons in relevant aspects of foreign exchange policies and procedures.

References

Barth, Richard C., and Chong-Huey Wong (ed.). 1994. *Approaches to Exchange Policy, Choices for Developing and Transition Economies*. Washington: IMF Institute, International Monetary Fund.

Clark, Peter, and others. 1994. *Exchange Rates and Economic Fundamentals, A Framework for Analysis*. Occasional Paper Number 115. Washington: International Monetary Fund.

Edwards, Sebastian. *Exchange Rate Misalignment in Developing Countries*. World Bank Occasional Papers, Number Two, New Series. 1988. Baltimore and London: The Johns Hopkins University Press.

Frenkel, Jacob, and others. 1991. *Characteristics of a Successful Exchange Rate System*. Occasional Paper Number 82. Washington: International Monetary Fund.

International Monetary Fund. *Exchange Arrangements and Exchange Restrictions, Annual Report 1997*. Washington: International Monetary Fund.

Liu, Ligang, and others. 1998. "Asian Competitive Devaluations." Working Paper 98-2, prepared for the conference "China's Integration into the World Economy" 17 January 1998, Harvard University. Washington: Institute for International Economics.

6. Labor Policies

Background

As a primary factor of production, labor is particularly susceptible to government policies that directly affect a firm's profitability and competitiveness. Government regulations that determine minimum wages, labor mobility, the hiring and firing of employees, and the use of expatriate personnel, all of which are intended to protect workers, can in fact have counterproductive effects on industrial development and long-term job creation.

MAJOR LABOR POLICY ISSUES IN DEVELOPING COUNTRIES

- **Excessively high government-regulated minimum wage that deters investment in labor-intensive production.**
- **Burdensome requirements discourage formal labor contracts and give rise to “casual labor,” leaving informal sector workers with little legal protection.**
- **Inadequate protection of children, women and other vulnerable groups in the labor force.**
- **Insufficient regulations and enforcement of workplace safety and other conditions.**
- **Onerous job security legislation that deters companies from hiring.**
- **Inadequate public education and training resources that restrict skills upgrade and hence the upward mobility of labor.**
- **Intense pressure to attract and retain international capital leading to the suppression of labor rights and risking debasing labor standards in some countries.**
- **Rigid demands of labor unions resulting in uncompetitive wages and constrained job expansion for all workers.**

Principles and Best Practices

Labor is an area where policymakers have to take into account both the business perspective and the labor side of the equation. The fact that governments and policymakers often view labor policy as a tool to achieve not only economic -- but also socio-political objectives -- has made labor policy one of the most contentious policy areas.

Traditionally, the debate has been characterized by the disagreements between the “pro-labor” and “pro-business” camps. The “pro-labor” school, which emphasizes the rights of and protection for workers, is often dismissed by the opposing camp as militants favoring a confrontational approach to management-labor relations, with little understanding of the realities of the market and competitive conditions.

Conversely, the “pro-business” school, which emphasizes the freedom of the market to set wages, the flexibility of businesses to hire and fire, and minimal interference in market forces, is often criticized by its ideological opponents as anti-labor, favoring exploitative practices and sweat shop conditions. Over the last decade, the debate has become increasingly intense with the rising mobility of international capital to countries with low-cost labor and other inputs, which has labor market implications for both industrial and developing countries.

Due to the uniqueness of each nation’s social and economic structure, historical legacy, and philosophical and ideological underpinnings, there is no “one size fits all” best practice in labor policy. However, given the global competitive realities and the need for protecting certain fundamental rights and setting minimum standards, there are some basic principles which should be met in setting and reforming labor policy:

BEST PRACTICES IN LABOR POLICY AND REGULATIONS

- **With increased global competition, labor groups in many countries are realizing that wage increases need to be matched by productivity growth, and that individual job security and overall job growth are ultimately tied to the competitiveness of their businesses.**
- **In this age of capital mobility and advanced telecommunications systems, labor is often the least mobile factor of production and one of the most important. The quality of the labor – skills, productivity, ability to learn, and work attitude – increasingly defines the competitive advantage of a nation or region.**
- **The best practices in labor policy can no longer be those that treat the needs of labor and business as a “zero sum game” but instead are those which engage labor and business as “partners” with common goals in achieving global competitiveness, skills development, rising wages, and continued job expansion.**
- **Government-mandated minimum wages should be set at levels which do not deter employment of least-skilled workers.**
- **Legislation aimed at protecting workers from unjustified dismissals and discrimination should not be so onerous as to discourage formal employment.**
- **Profit sharing and ESOPs for workers are effective productivity inducement measures**
- **Training incentives can encourage employers to upgrade workers’ skills, promote productivity gains and upward mobility of workers.**

- **Government neutrality regarding labor-management relations during disputes encourages both sides to comprise and work toward practical solutions which are mutually beneficial.**

- **One source of international labor standards is the International Labor Organization (ILO). Over the years, ILO members representing governments, labor and business have built up a system of international standards in all work-related matters, such as**
 - ◆ **the abolition of forced labor;**
 - ◆ **freedom of association;**
 - ◆ **social security;**
 - ◆ **occupational health and safety protection;**
 - ◆ **maternity protection; and**
 - ◆ **minimum age for entering the labor market.**

Identification and Assessment of Major Bottlenecks in Labor Policy

Task 1: Conduct Stakeholder Interviews and Focus Groups. Under this task, the consultants will solicit views from key stakeholders in interviews and focus groups on the major bottlenecks in labor policy. Key stakeholders include:

- Labor union representatives
- Representatives of businesses
- Department of Labor officials
- Labor training institutions
- Representatives from donor agencies which work on labor, employment, and training issues (e.g., USAID, the World Bank, and ILO, etc.)

Task 2: Perform Policy and Procedures Audit. This task will primarily focus on the existing labor policy and its enforcement. This audit will identify the aspects of labor policy which are most problematic to businesses, and to labor. The following is a sample checklist of labor policy areas which will be examined.

CHECKLIST OF LABOR POLICY ISSUES

- ☐ Compensation, including minimum wage, overtime pay, and other statutory benefits.
- ☐ Terminations of employment (severance pay, dismissal procedures).
- ☐ Restrictions on fixed-term contracts/part-time and temporary help.
- ☐ Mandated working hours and leave (annual, sick, maternity).
- ☐ Child labor regulations and practices.
- ☐ Treatment and conditions of expatriate workers.
- ☐ Payroll tax/social security (pension, disability, unemployment).
- ☐ Employee rights (organize, strike, wages while on strike, renounce union membership and return to work, etc.).
- ☐ Union rights and limits on the number of unions in each sector
- ☐ Dispute resolution mechanism in place.
- ☐ Employer rights (lock out, temporarily replace workers, etc.).
- ☐ Who bears the costs of strikes or lockouts (management, labor, government).
- ☐ Collective bargaining regulations.
- ☐ Incentives or inducement for worker training: training subsidies, training grant, tax rebates, or special tax to finance training.

During this task, the consultants will compile all laws and regulations governing the country's labor regime, including:

- ✓ Labor code
- ✓ Minimum wage law
- ✓ Occupational, health and safety regulations
- ✓ Collective bargaining agreements
- ✓ Constitution
- ✓ International labor codes (e.g. ILO)
- ✓ Labor training incentive schemes and regulations

Task 3: Assess impact of major policy and procedure bottlenecks on business costs and overall competitiveness. After the major labor policy bottlenecks have been identified, the consultants will measure their impact on business and labor. Some of the standard analytical measures used to indicate labor market bottlenecks include:

- Unemployment rate, as its trend is an indication of major structural issues in the labor market.
- Difference between formal sector wages and informal sector wages.
- The rate of increase of wages compared to productivity gains.
- Man days lost to strike economy-wide.
- The size of the informal sector as an indication of the difficulty/disadvantage of creating formal jobs (or workers to avoid taxation).

If management-labor relations are identified as a major source of inefficiency loss, the consultants can measure the loss in output resulting from strike actions. The lost of potential investment due to strained management-labor relations can also be estimated in terms of potential jobs loss. If workplace safety standards and enforcement are considered inadequate, the consultants will identify the costs (human and economic) related to workplace accidents.

The following box illustrates a typical policy assessment process.

EXAMPLE ASSESSMENT: IMPACT OF HIGH GOVERNMENT-LEGISLATED MINIMUM WAGES

A high Government-regulated minimum wage can be among the most severe constraints to business development and labor creation. High administered wage rates discourage labor-intensive production in which many developing countries have a comparative advantage and encourage the substitution of capital for labor in industrial production. The higher the mandated wage level relative to the level that would prevail in a free market and the greater the elasticity of demand for labor, the greater the loss of employment in the short term. Over the long term, firms substitute capital-intensive methods of production for high cost labor, new investment and entry are deterred, and those seeking work migrate from rural to urban areas in search of the scarce, high-paying jobs, with consequent social problems. The net result of the high wage policy on industrial development is slower growth and fewer jobs created.

Given this situation, consultants would:

- calculate the number of jobs lost/not created due to above market-rate minimum wage;
- calculate lost tax revenues from informal jobs resulting from above market-rate minimum wage; and
- calculate change in labor intensity of production over a determined amount of years

Task 4: Benchmark against competitors and international best practices in critical areas.

Under this task, the consultants will benchmark against competitor countries in key labor policy and/or labor market indicators in the major bottleneck areas identified. They indicators may include:

- The rate of labor productivity increases.
- Wages as a share of value-added.
- The number of ILO conventions in force.
- Man days lost to strike actions.
- Perception of management-labor by the international investment community.
- Training incentives.

Where appropriate, the consultants will also provide case studies which will compare the country's experience *vis-a-vis* competitors or best practices.

References

International Labor Organization. *Conventions and Recommendations on International Labor Standards and Human Rights*. Geneva.

International Labor Organization. 1995. *World Employment 1995, An ILO Report*. Geneva.

Boone, Peter, and Ophelia Yeung. 1997. “*Benchmarking South Africa for Labor Intensive Development*,” Prepared for the Industrial Development Corporation of South Africa. SRI International.

The World Bank. 1996. *Involving Workers in East Asia’s Growth*. Regional Perspectives on World Development Report 1995. Washington.

The World Bank. 1995. *Labor and Economic Reforms in Latin America and the Caribbean*. Regional Perspectives on World Development Report 1995. Washington.

The World Bank. 1995. *Labor and the Growth Crisis in Sub-Saharan Africa*. Regional Perspectives on World Development Report 1995. Washington.

7. Tax Policies

Principles and Best Practices

Taxation is a key policy instrument which affects government fiscal balances and business profitability. In every country there is an important balance between raising sufficient government revenues to provide adequate public services and to maintain infrastructure, and providing ample incentives for the private sector to invest and obtain satisfactory returns on capital.

Apart from revenue raising, governments often view taxation as a tool for redistribution of income, the correction of market imperfections and the provision of incentives for desirable activities. Although the optimal level and structure of a tax system will vary from country to country, cross-country experience reveals a wealth of knowledge about best practices and guiding principles.

Taxation carries important costs, both in terms of the direct costs associated with its administration, as well as the indirect costs associated with a system that promotes an inefficient allocation of resources within an economy. In recent years, developing countries have turned to tax reform to address a number of important issues including:

- Insufficient revenue collection, necessitating deficit spending and resulting in indebtedness and/or inflation.
- Distortions in the tax system that reduce economic welfare and growth.
- Addressing inequities, including the provision of tax relief to the poorest households and the better distribution of tax burden among the non-poor.
- Inefficient tax administration, a result of complicated tax codes and inefficient bureaucracies.

The experiences of tax reforms across a wide array of industrial and developing countries in the past two decades provide important lessons on the most important tax principles to follow:

- A high priority should be placed on achieving a broad tax base. Broadening the tax base can provide the government with additional sources of revenue and allows a more efficient allocation of the tax burden.
- Tax rates often need to be lowered and rationalized to reduce economic distortions and simplify collection.
- There are various economically efficient methods for reducing the tax burden of the poorest.
- Tax administration needs to be automatic and impersonal.

The following boxes illustrate specific best practices in tax policy and administration.

BEST PRACTICE IN TAX POLICIES

Overall Structure

- Shift from a reliance on a narrow international trade base and/or a limited domestic production base to a broader domestic base.
- Within domestic base, general structural shift from taxes on income and wealth to taxes on consumption. The consumption-type destination-based invoice-backed VAT is generally regarded as the best general tax on consumption.
- Reduced use of tax preferences and exemptions for promotion of specific goals (“tax expenditures”).
- No differentiation between foreign and domestic corporations.

International

- Reduction in the number and dispersion of customs tariff rates, and over time, a lowering of average tariff rates to reduce distortions created by trade policy.
- Elimination of export taxes.
- Development of strong export rebate and duty drawback schemes.

Goods and Services

- Consensus that the VAT should be the instrument of choice for most LDC wanting to tax goods and services.
- Setting of the central rate for VAT on goods and services in the range of 10 to 15 percent.
- Exemption of items from VAT that are significant component of expenditures of the poor (i.e., unprocessed foods).

Personal

- Reductions in the top marginal rates for personal income taxes to between 20 to 30 percent.
- An effectively progressive structure depends on the comprehensiveness of the tax base as much as on the progressivity of tax rates.
- Flattening rate structures, fewer number of rates, with alignment of top income rates with corporate rates.
- Expansion of withholding taxes to investment income as well as wages.
- Movement toward a global system based on aggregating income from all sources.
- Use of income exemption levels high enough to exclude very small taxpayers (i.e., at minimum wage or similar threshold).
- Use of withholding taxes on wages and interest income.
- Fair use of presumptive taxation for hard-to-tax groups.

Corporate

- Single, low, statutory corporate tax rate equivalent to the highest personal tax rate.
- Use of minimum forfeiture taxes to control negative revenue effects of tax loopholes.
- Tax preferences limited in scope and duration to address clear market imperfections
- Deductions, allowances and credits distributed evenly across sectors and assets
- Growing stress on straightforward accounting procedures that promote transparency and accountability.
- Adjustment for inflation through inflation-adjusted interest deductions and other means

Excise

- Setting three or four selective tax rates on luxuries and nonessential, with rates ascending according to the item’s role in the consumption of the well-off.
- No distinctions by source of production (foreign or domestic).

BEST PRACTICES IN TAX ADMINISTRATION

Policy Related Aspects

- Development of simple, transparent systems (few brackets, etc.), allowing easy compliance and more/better audits
- Pay scale of tax officials above that of general civil servants
- Privatization of certain customs/tax administration procedures

Tax Assessment

- Self assessment systems in which taxpayers are required to calculate their own liability. This increases the number of people who identify themselves as taxpayers, takes away corruption opportunities for bureaucrats and allows administrators to focus on compliance

Tax Monitoring/Enforcement

- Selective checking and internal auditing of individuals and corporations, with higher frequency for large taxpayers.
- Heavy but fair penalties issued for deliberate under reporting.
- Availability of tax assessment committees to solve disputes between payers and tax administration.
- Right of payer to go to court in case of disagreement
- Assurances of confidentiality concerning taxpayers files and information

Tax Processing

- Mechanization of manual procedures (with eventual computerization)
- Use of computerized systems that contain master files on tax payers, allowing for easy access to taxpayer data.
- Introduction of numbers that uniquely identify taxpayers, enhancing ability to cross-reference and minimizing errors.
- Staff retraining

Tax Collection

- When possible, withholding of taxes at the source, such as in pay-as-you-go (PAYE) or interest withholding schemes

Identification and Assessment of Bottlenecks

Task 1: Conduct stakeholder interviews and focus groups

Consultants will solicit views from key stakeholders in interviews and focus groups to examine key policies and procedures regarded as inefficient, inequitable and uncompetitive. Particular attention will be placed on procedural bottlenecks created by both the policy environment (i.e., particularly complex tax provisions) and the tax system administration. Key stakeholders could include the following:

- International investors

- Representatives from small, medium, and large-scale businesses
- Broad business associations
- Tax administration officials
- Customs officials
- Assessors and analysts from international accounting houses
- USAID officials, officials from the IMF, World Bank and other multilateral/bilateral organizations with cross-country experience in tax reform

Task 2: Perform policy and procedures audit. The consultants will conduct a policy and procedures audit to identify the most problematic aspects of the country's tax regime, particularly in regards to private sector operations. The auditors will use a checklist of taxation policies and procedures to identify major bottlenecks and inefficiencies. This list will be used during stakeholder interviews and focus groups.

A sample checklist follows:

<i>CHECKLIST FOR TAX POLICY AUDIT</i>	
<i>Tax Structure</i>	
<input type="checkbox"/>	What are the country's main revenue sources? (International trade/goods/services personal/corporate/excise/other)
<input type="checkbox"/>	Breadth of tax base (percentage of total population)
<input type="checkbox"/>	Overall fiscal position of government (tax revenue/GDP, tax revenue/expenditure ratios)
<input type="checkbox"/>	Prevalence of "tax expenditures" (high/low)
<input type="checkbox"/>	Differentiation between foreign and domestic corporations (yes/no)
<i>International</i>	
<input type="checkbox"/>	Level and prevalence of tariffs
<input type="checkbox"/>	Level and prevalence of export taxes
<input type="checkbox"/>	Duty drawback system: Is there one? Is it efficient?
<i>Goods and Services</i>	
<input type="checkbox"/>	Is there one? What type(s).
<input type="checkbox"/>	Tax rates
<input type="checkbox"/>	Types of exemptions
<i>Personal</i>	
<input type="checkbox"/>	Identify personal tax rates
<input type="checkbox"/>	How many tax brackets? How far apart?
<input type="checkbox"/>	Global or schedular system?
<input type="checkbox"/>	Income exemptions for small taxpayers? What level?
<input type="checkbox"/>	Use of withholding taxes?
<input type="checkbox"/>	Presumptive taxation for hard-to-tax groups?
<input type="checkbox"/>	Are nominal figures adjusted for inflation?

<i>Corporate</i>	
<input type="checkbox"/>	Number of rates, level(s)
<input type="checkbox"/>	Is rate aligned to top personal rate?
<input type="checkbox"/>	Is there a minimum tax?
<input type="checkbox"/>	Types, scope and duration of tax preferences
<input type="checkbox"/>	Are nominal figures adjusted for inflation?
<i>Excise</i>	
<input type="checkbox"/>	What products have excise taxes?
<input type="checkbox"/>	Distinctions by source of production?

CHECKLIST FOR TAX ADMINISTRATION AUDIT	
<i>Policy Related Aspects</i>	
<input type="checkbox"/>	Pay scale of tax officials (vis-a-vis other public servants)
<input type="checkbox"/>	Are any procedures privatized? Which?
<i>Tax Assessment</i>	
<input type="checkbox"/>	Who assesses taxes? (individuals/corporations/government)
<input type="checkbox"/>	Levels of misreporting
<i>Tax Monitoring/Enforcement</i>	
<input type="checkbox"/>	Frequency of auditing (percentage rates, by income levels and turnover)
<input type="checkbox"/>	Frequency and types of penalties levied
<input type="checkbox"/>	Is dispute resolution available?
<input type="checkbox"/>	Right of payer to go to court?
<input type="checkbox"/>	Rates of disputed assessments
<i>Tax Processing</i>	
<input type="checkbox"/>	Computerized system?
<input type="checkbox"/>	Master files?
<input type="checkbox"/>	Easy access to tax payer data and ability to cross-reference data?
<input type="checkbox"/>	Familiarity of staff with system (high/low)
<i>Tax Collection</i>	
<input type="checkbox"/>	Are taxes withheld at source?
<input type="checkbox"/>	Collection rates

As part of this task, the consultants will compile all laws and regulations governing the country's tax system, including:

- ✓ Tax laws
- ✓ Tax rates

- ✓ Customs code
- ✓ Tax administration regulations
- ✓ Laws regulating tax penalties
- ✓ International tax treaties
- ✓ International trade and investment agreements (WTO, regional/bilateral pacts, etc.)

Task 3: Assess impact of major policy and procedures bottlenecks on business costs and overall competitiveness. After the major policy and procedure bottlenecks have been identified, the consultants will assess their impact on business costs and overall competitiveness. Consultants will gauge the direct and indirect costs of the identified bottlenecks either in terms of time or money.

For example, if through the interviews it is established that the auditing process is overly onerous, the consultants will track the process, quantify the amount of time it takes for the procedures to take place and estimate the total costs of this process on companies in terms of persons/days. Consultants will also be able to identify specific bottlenecks and assess whether these are the result of legislation, executive decisions or administrative practices.

Similar assessments will be done at the policy level. If, for example, it is determined that the tax system has too many loopholes, the consultants would assess the impact of particular tax provisions on government revenues.

EXAMPLE ASSESSMENT: TAX ADMINISTRATION IN JORDAN

Jordan's new Income Tax law has been widely praised as progressive by companies and individual alike. However, while the rates of taxation are considered to have significantly improved Jordan's investment climate, the tax assessing procedures significantly undermine business practices. In particular, tax administrators have wide latitude in assessing and confirming due taxes, necessitating companies to spend significant amounts time and resources haggling with assessors over their taxes.

By looking at the country's tax laws and regulations and studying their application, consultants would find the following bottlenecks:

Bottleneck 1: Unlike other countries, Article 34 of Jordan's Income Tax Law stipulates that the onus of proof for tax assessments lies on the filer, causing companies to spend inordinate amounts of person/hours filing and backing up their tax claims.

Bottleneck 2: Unlike international best practices, in Jordan all companies are audited every year, with the audit's coverage spanning the company's five last years of operations.

Bottleneck 3: Jordan's tax system allows a very large number of exemptions and allowances for certain kinds of investments. These are found to require a large amount of administrative resources from tax assessors seeking to monitor these claims, and well as for companies needing to back up their claims for allowances

Assessments of these particular bottlenecks would focus on:

- The ratio of tax files that are reassessed by tax administrators.
- Typical amount of time it takes for an average firm to prepare and file taxes.
- A monetary figure for the person/days lost to tax filing process.

The consulting team would also make a general assessment of how these bottleneck affect the country's

general commercial policy environment, particularly as it relates to prospective domestic and foreign investors with several investment options.

Task 4: Benchmark against competitors and international best practices in critical areas.

This task will consist of selecting appropriate competitor and benchmark countries to compare performance in bottleneck areas. For example, if the tax assessment process is regarded as being overly lengthy, the consultants will compare the amount of days for this process to take place in the client country vis-a-vis others.

Benchmarking has proven to be a powerful tool for critically assessing a country's performance against international standards. In selecting benchmark countries, efforts will be made to identify countries with similar levels of development, direct competitors, as well as best-practice nations. In this way, client countries will be able to identify challenging but realistic targets that they can meet.

EXAMPLE BENCHMARK:

Following the Jordan case from above, the consulting team would benchmark Jordan against best practice countries and competitors in the following sample areas:

- **Audit rates**
- **Days spent by auditors per tax file**
- **Number of years companies are audited for**
- **Prevalence in the use of loopholes and allowances per company**
- **Dispute rates between assessors and filers**

References

Lessons of Tax Reform. Washington, DC: The World Bank, 1991.

Shome, Parthasarathi (ed.). *Tax Policy Handbook*. Washington, DC: The International Monetary Fund, 1995.

Thirsk, Wayne (ed.). *Tax Reform in Developing Countries*. Washington, DC: The World Bank, 1997

Thuronyi, Victor (ed.) *Tax Law Design and Drafting: Vol. 1*. Washington, DC: The International Monetary Fund, 1996.

8. Export Policies

Principles and Best Practices

The experience of East and Southeast Asia reveals the critical role that exports can play in an economy's long-term success. Despite recent financial set-backs, over the past three decades Asia's NICs have achieved impressive rates of economic growth with increasing equality. According to the World Bank and other multilateral economic advisory organizations, the experience of these countries was no "miracle," but rather the result of sound export-friendly policies and procedures that facilitated production for sale in the international market.

In reviewing the economic practices of rapid export-growth countries in not only in Asia, but also Europe, Africa and Latin America, several principles stand out as necessary guidelines for creating an environment conducive to exports:

- **Maintenance of a competitive exchange rate:** An exchange rate system that maintains a competitive exchange rate is the single most important foundation for a healthy export sector.
- **Access to inputs at internationally competitive prices:** Meeting this condition requires liberalized trade regimes, elimination of monopolies and price controls, and the introduction of policies which encourage domestic competition.
- **Access to international markets:** This requires the absence or elimination of all restrictions on exporters including export taxes, export licensing, and quantitative controls.
- **Access to credit and other financial services at internationally competitive rates:** In general, the economy does not benefit from special below market rates of credit for exporters, but rather from policies that ensure exporters credit at internationally competitive rates adjusted for risks associated with local economic and political conditions. In many countries with tightly controlled financial markets, formal credit is unavailable at any price for non-traditional exporters. This represents a serious policy impediment to exporting.
- **Access to deregulated and competitive export-related logistical services:** The logistics associated with the actual exporting process are critical. Uncompetitive ports, airports, docking, warehousing and other such services, which are often government controlled or regulated, can raise a country's effective exporting costs to prohibitive levels.

- **Access to government support network:** the experience of successful exporters reveals careful government support and facilitation of exporting activities, particularly regarding non-traditional exports and small exporters.

Best practices in export policies vary across the world depending on a country's level of development, administrative capacity, proximity to markets, and other important determinants. However, just as there are several important principles that nations who seek to increase exports need to follow, the following have been judged to be the most conducive policies and procedures followed by governments seeking to achieve export-led growth.

BEST PRACTICES IN EXPORT POLICIES AND PROCEDURES

Exchange Rate Policies

- Exchange rate aligned with market forces, particularly vis-a-vis major trading partners
- No exchange controls, particularly for importers of intermediate products for exports

Access to Inputs at Competitive Prices

Import Policies

- Low tariffs
- No import controls/bans
- No government sanctioned import monopolies or state trading companies
- No import approvals needed

Duty Drawback System

- Best for countries administratively able to manage system
- Fixed system, with refunds on estimated duties and indirect taxes that enter into productions costs according to a fixed schedule, rather than a case-by-case system

Free Trade Zones

- Work better than duty drawbacks in countries with weak administrative capabilities
- Countries should have FTZs and drawback schemes and let companies choose between the two
- Availability of Bonded Manufacture Warehouses (BMWs) for companies outside FTZs.

VAT refunds

- No application of VAT for capital goods for export and goods temporarily imported for re-export

Market Access

Trade Agreements

- WTO signatory
- Participation in bilateral and multilateral free trade agreements

Export Taxes

- No taxes on exports
- Use of income tax or royalties to tax foreign companies involved in the extraction of natural resources

Export Licensing

- Simple and automatic licensing for statistical purposes only
- Applications needed for only goods with security implications
- Export quality standards administered by private industry (e.g. ISO 9000 series) to protect regional/national reputation

BEST PRACTICES IN EXPORT POLICIES AND PROCEDURES (CONTINUED)

Access to Finance/Insurance

- Availability of pre-shipment working capital loans (90 days or less) for small exporters, particularly for least developed countries
- Government-backed pre-shipment finance guarantee systems or government-backed export letters of credit
- In more advanced economies, post-shipment financing and export credit insurance for pooling risks of non-payment

Transportation Infrastructure

Transportation Policy and Facilities

- Deregulated and commercialized port/airport services.
- Modern and efficient docking/warehousing facilities.
- No shipping or air transport monopolies

Customs

- Streamlined customs regulations
- One-stop-shop for customs controls

Institutional Support

Facilitating Network/Incentives

- Technical assistance such as market information, marketing/ promotion, skill upgrading, product engineering and quality control.
- Clusters-based cooperation
- For more advanced economies, export promotion institutions knowledgeable in latest marketing techniques and with developed marketing networks

Export Incentive Policies and Procedures

- Targeted assistance through incentives (income tax holidays, investment incentives, accelerated depreciation, etc)

- **Automatic systems with no administrative uncertainty, allowing the private sector to quickly respond to incentives granted by government**
- **Rules applied strictly to minimize abuses of incentive system**
- **Delegation of tasks to commercial banks, accounting houses or export associations to reduce costs and increase administrative efficiency**

Identification and Assessment of Major Bottlenecks for Exports

Task 1: Conduct stakeholder interviews and focus groups. Consultants will solicit views from key stakeholders through interviews and focus groups to examine key policies and procedures regarded as anti-export. Attention will be paid to bottlenecks created by inappropriate policies and procedures, as well identifying gaps (such as lack of a duty drawback system) that substantially undermine a country's export competitiveness. Key stakeholders could include the following:

- Major local exporters
- Multinational exporters
- SME representatives
- Broad business associations
- Customs officials
- Central bank officials
- Trade zone officials and operators
- Tax administration officials
- Analysts from international accounting houses
- Freight forwarders
- Port and airport officials and operators
- USAID officials

Task 2: Perform policy and procedures audit. The consultants will conduct a policy and procedures audit to identify the most problematic aspects of the country's export regime, particularly from the view of the private exporter. The export regime "auditors" will use a checklist of policies and procedures based on international best practices to identify major bottlenecks and gaps. This list will be used during stakeholder interviews and focus groups.

A sample checklist follows:

<i>CHECKLIST FOR EXPORT POLICIES AND PROCEDURES AUDIT</i>	
<i>Exchange rate regime</i>	
<input type="checkbox"/>	Is domestic currency overvalued?
<input type="checkbox"/>	What kinds of exchange controls are in existence?
<i>Importing</i>	
<input type="checkbox"/>	Tariff rates
<input type="checkbox"/>	Any import control measures/bans?
<input type="checkbox"/>	Any import monopolies? State trading companies?
<input type="checkbox"/>	Are import approvals needed? For what items?
<input type="checkbox"/>	Is there a duty drawback system? Is it based on a schedular or a case-by-case system?

- ☐ Are there free zones? Bonded manufacture warehouses?
- ☐ VAT refunds for capital goods for export? For goods temporarily imported for re-export?

Market access

- ☐ Is country signatory to WTO? What were the agreed conditions?
- ☐ Other trade agreements? Provisions.
- ☐ Any export taxes?
- ☐ Licensing systems and requirements

Access to finance/insurance

- ☐ Are there working capital loans for export-SMEs? What types of loans?
- ☐ Are there pre-shipment finance guarantee systems? Post-shipment financing and export credit insurance?
- ☐ Use of export letters of credit?

Trade infrastructure

- ☐ Are port/airport facilities and fees internationally competitive?
- ☐ Any transportation-related monopolies?
- ☐ Is there a customs one-stop-shop?
- ☐ Customs procedures computerized?

Institutional Support

- ☐ What kinds of technical assistance does the government provide exporters (market information/marketing/promotion/skill upgrading/product engineering/quality control)?
- ☐ Types of incentives (tax holidays, investment incentives, accelerated depreciation, other)
- ☐ Who administers incentive schemes? How automatic are incentives?

As part of this task, the consultants will compile all relevant laws and regulations shaping the country's export regime, including:

- ✓ Customs Code and administrative regulations
- ✓ WTO/other commitment letters
- ✓ FTZ and BMW laws
- ✓ Port/airport regulation laws
- ✓ Incentives laws
- ✓ Export credit regulations and policies
- ✓ Export tax laws and regulations
- ✓ Duty drawback legislation
- ✓ Exchange control regulations
- ✓ Bilateral trade agreements

Task 3: Assess impact of major policy and procedures on business costs and overall competitiveness

After the major policy and procedure bottlenecks and options for policy improvements have been identified, the consultants will assess their impact on business costs and overall competitiveness. Consultants will gauge the direct and indirect costs/impact in terms of either time (as in how much time would be saved by changing an export provision) or money.

For example, if through the interviews the consultants establish that the process of getting exports through the ports is overly onerous, the consultants will track the process, quantify the amount of time it takes for the procedures to take place and estimate the total costs of this process on companies. Consultants will also be able to identify specific bottlenecks or policy problems and assess whether these are the result of legislation, executive decisions or administrative practices.

EXAMPLE ASSESSMENT: KENYA'S EXPORT DEVELOPMENT POLICIES

The early phase of Kenya's reforms focused on correcting the overvalued real exchange rate and promoting factory-based free trade status through the Manufacturing Under Bond (MUB) schemes. The MUB scheme was subsequently modified to allow firms to sell rejects in the domestic market. While the system has been a modest success compared with past export incentives programs, with approximately 40 garment factories under the scheme, companies complain about procedures that are inefficient, subject to regulatory discretion, and even unfair. As a consequence, no foreign investment has been attracted through the MUB scheme.

By looking at the country's laws and regulations, and studying their application, the consultants would find the following bottlenecks:

Bottleneck 1: The system operates on the traditional double-lock method on all storage areas, so that the Customs officer, who is posted full-time to an individual factory, can authorize, and physically supervise all movements of stock, using his second lock. This procedure is cumbersome, outdated and subject to abuse.

Bottleneck 2: The quantity of goods that factories under the MUB scheme are allowed to sell in the local market is largely subject to the discretion of the bureaucracy. Rules on this issue are unclear, and therefore their application is inconsistent and subject to abuse.

Assessments of these particular bottlenecks would focus on:

- Amount of time it takes for customs officials to process the movement of goods in and out of a MUB factory
- Supervisions per day/week
- Percentage of goods produced under the MUB scheme allowed to be sold in domestic market
- Number (and percentage) of applications for selling in domestic market rejected

The consulting team would also make a general assessment of how these bottlenecks affect the country's general commercial policy environment, particularly as it relates to the export performance of the private sector.

From: Peter Harrold and others in *Practical Lessons for Africa from East Asia in Industrial and Trade Policies*

Task 4: Benchmark against competitors and international best practices in critical areas.

This task will consist of selecting appropriate competitor and best-practice countries to compare performance in bottlenecks/problem areas. Benchmarking has proven to be a powerful tool for critically assessing a country's performance against international standards. In selecting benchmark countries, efforts will be made to identify countries with similar levels of development, countries in direct competition with the client country for investment dollars, as well as best-practice ("benchmark") nations. In this way, client countries will be able to identify challenging but realistic targets to meet.

EXAMPLE EXPORT POLICY BENCHMARK

Following the Kenyan case from above, the consulting team would benchmark Kenya against best practice countries and competitors in the following sample areas:

- Customs clearance time
- Percentage of foreign investment of total investment under MUB schemes
- Percentage of output that factories under MUB schemes can sell in local market
- Monitor/supervision systems used for MUB schemes
- Methods for preventing bureaucratic abuse

References

Bhattasali, Deepak; Harrold, Peter; and Jayawickrama, Malathi. *Practical Lessons for Africa from East Asia in Industrial and Trade Policies*. Washington, DC: 1996.

Economist Intelligence Unit. *Various ILT Reports*. United Kingdom: Economist Intelligence Unit Limited, 1997.

Havrylyshyn, Oli (ed.). *Exports of Developing Countries: How Direction Affects Performance*. Washington, DC: The World Bank, 1987.

Rhee, Yung Whee. *A Framework for Export Policy and Administration: Lessons from the East Asian Experience*. Washington, DC: The World Bank, 1984.

SRI International. *Trade and Investment Project Guidebook*. Arlington, VA: SRI International, 1990.

9. Intellectual Property Rights Protection Policies

Background

As nations compete for scarce investment resources and their businesses seek partnerships with international firms to access technologies and know-how, the protection of intellectual property rights (IPR) has emerged as an important policy tool. Intellectual property rights are broadly defined as the rights given the persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation over a certain period of time. Intellectual property rights are grouped into three main areas:

PRINCIPAL TYPES OF IPR PROTECTION

- **Copyrights:** A form of protection to authors for original works including literary, dramatic, musical, artistic, and other intellectual works. The owner has the exclusive control of the reproduction, publication, and sale of the work for a limited period of time. The copyright is limited to copying the publication and does not preclude the use of the information contained therein. Copyright violations are referred to as infringement or piracy.⁷
- **Trademarks:** A trademark is any word, name, symbol, or device used by manufacturers or merchants to identify their goods and distinguish them from those manufactured or sold by others. Counterfeiting is the unauthorized use of a representation or copy of a registered trademark or service mark.⁸ Other forms of trademark infringement include offering for sale, distribution, or advertising any goods or services using a copy or imitation so similar that confusion is likely to result.
- **Patents:** A patent is a protection conveyed by a government to an inventor, securing to the inventor the exclusive right to make, use and sell his/her invention for a period of years.⁹ To be valid, an invention patent must disclose an invention that is novel, useful, and an improvement over the prior art. Patent violations are referred to as patent infringement or piracy.

⁷U.S. International Trade Commission (1988), Chapter One.

⁸ A service mark is a mark or device used to identify a service such as transportation or insurance offered to customers.

⁹Black (1979), page. 705.

Strengthening IPR protection often entails expenses such as higher administrative and enforcement costs, increase in royalty payments, displacement of pirate merchants, and the possibility of monopolistic pricing. These costs, however, are for the most part short-term adjustments which are outweighed by the long-term, positive impact of stronger IPR protection, including:

- Positive contributions to economic development and foreign direct investment;
- Increased domestic research and development (R&D);
- Increased technology transfer;
- Maintenance of trade relations with major markets (especially the United States and the EU);
- Increased domestic innovation; and
- Consumer welfare gains through greater product variety and safety.

Principles and Best Practices

International agreements and standards on intellectual property have existed for over a century. Prior to the incorporation of IPR provisions into the World Trade Organization, the most important international conventions providing standards and for IPR protection are the 1883 Paris Convention governing patents and trademarks, and the 1886 Berne Convention on copyrights. In addition, the Rome Convention has provided important guidelines to protect performers, producers and broadcasters. Both the Paris and Berne Conventions are administered by the World Intellectual Property Organization (WIPO). However, WIPO is primarily a policy advisory board with no authority or mechanisms to enforce its provisions or resolve disputes, which rests with national courts instead.

IPR protection was incorporated into the WTO under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS agreement) in January 1995. The TRIPS agreement lays out the minimum standards of IPR protection which must be achieved by all members of the WTO. Worldwide, it is regarded as the most comprehensive agreement on international standards of minimum IPR protection. The TRIPS Agreement creates a binding enforcement mechanism for signatories of international conventions on IPR. TRIPS also raises the minimum standards for IP protection compared to existing multilateral conventions on IPR. The main provisions are outlined below.

MINIMUM STANDARDS OF IPR PROTECTION UNDER TRIPS

➤ ***Copyrights.*** TRIPS includes computer programs and compilations of data in addition to the list of

subjects covered in the Berne Convention. It also extends copyright protection on performers and producers of phonograms from 20 years (as specified in the Rome Convention) to 50 years. Copyright protection for broadcasts is provided for 20 years.

- **Trademarks.** The initial period of trademark registration is seven years, and renewable indefinitely. The Paris Convention specifies no minimum term for trademark protection.
- **Patents.** TRIPS gives parties the right to exclude from patentability inventions which many threaten the environment and methods for the treatment of humans or animals, subjects that are not addressed under the current Paris text. Patent protection extends to 20 years from the filing date of the patent application, compared to no specified protection period under the Paris Convention.
- **Industrial Designs.** TRIPS grants 10 years protection for industrial designs, compared to no minimum protection period according to the Paris Convention.
- **Geographical Indications.** TRIPS provides detailed prohibitions against the mislabeling of products by geographic origin, especially for the protection of wine and spirits.
- **Layouts-Designs of Integrated Circuits.** TRIPS strengthens the Treaty on Intellectual Property in Respect of Integrated Circuits concluded in 1989 by extending the terms of protection from 8 years to 10 years.

The standards established by the TRIPS Agreement are minimum standards which must be met by all signatory countries. Countries can choose to provide additional IPR protection and coverage beyond these standards. Developed country members have had to comply with all of the provisions of the TRIPS Agreement since January 1, 1996. For developing countries, the general transitional period is five years, i.e., until January 1, 2000. A country whose economy is in transition, but which is not a developing country, may delay application until year 2000 if it met certain conditions. Least-developed countries have ten years to conform with the agreement and may request extensions of this period.

In addition, TRIPS provides for concrete enforcement mechanisms that were not available under previous IPR conventions. TRIPS obliges all parties to ensure "fair and equitable" enforcement of IP protection and to avoid complicated, costly or dilatory adjudication procedures. The agreement also outlines several civil and administrative procedures. Among them are:

TRIPS IPR ENFORCEMENT GUIDELINES

- ***Fair and equitable procedures.*** Right holders are entitled to independent legal counsel, and should not be required to adhere to mandatory personal appearances. All parties shall be entitled to present all relevant evidence.
- ***Burden of evidence.*** In cases where a party does not provide information within a reasonable time

	period or impedes the enforcement procedure without good reason, judicial authorities may make preliminary decisions based on the information presented to them.
➤	Injunctions. Judicial authorities may order a party to desist from an infringement <i>inter alia</i> in order to prevent the continued exchange of goods which involve the infringement of IP rights.
➤	Damages. Judicial authorities may order compensation for an injured party (including legal fees) by an infringer who knew or had reasonable grounds to know that he was engaging in an illegal activity.
➤	Other remedies. Judicial authorities have the power to dispose of or destroy goods which violate IP laws.
➤	Indemnification of the defendant. Parties who have been wrongfully adjudicated for IP violations through the abuse of enforcement procedures have the right to compensation from the plaintiff.
➤	Criminal Procedures. In cases of willful trademark counterfeiting or copyright piracy, judicial authorities may avail themselves of remedies which include: imprisonment and/or monetary fines sufficient to provide a deterrent to future infringement; seizure, forfeiture and destruction of infringing goods.
➤	Dispute prevention and settlement. Disputes are to be settled according to Provisions XXII and XXIII of the GATT which provide for an impartial panel of experts from countries not party to the dispute to review the issues and decide the case.

Identification and Assessment of Major Bottlenecks in Intellectual Property Rights Protection

The identification and assessment of major bottlenecks in IPR protection will focus on both the nation's existing IPR policies and the effectiveness of its enforcement mechanisms.

Task 1: Conduct Stakeholder Interviews and Focus Group. The consultants will conduct interviews and focus groups with key stakeholders to solicit their views on the major bottleneck areas in IPR protection. Key stakeholders will include the following:

- Associations or organizations which represent the interest of IP owners (e.g., intellectual property alliances)
- Chambers of commerce
- Associations in industries which are most affected by IPR laws and enforcement (e.g., softer industry associations, recording industry associations, pharmaceutical industry associations, motion picture industry associations, etc.)
- IPR policymaking bodies
- Officials from the bureau/office of patent and trademarks
- Officials from the copyright office
- Officials from other administrative/quasi-judicial bodies which administer IPR laws (e.g., department of trade and industry, bureau of customs)

- Representatives from the law enforcement agencies which conduct investigations and arrests (e.g., national bureau of investigation, national police)
- Representatives of consumer groups
- Representatives from the judiciary (e.g., the department of justice)
- Representatives from USAID, World Bank, WIPO, and WTO.

Task 2: Perform Policy and Procedures Audit. The consultants will conduct a policy and procedure audit to identify the aspects of IPR laws and enforcement mechanisms which are the most problematic for the business community, including multinational corporations operating in the country. The consultants will first undertake a compilation of existing laws and regulations which govern IPR protection and the enforcement mechanisms. These include:

- ✓ Trademark Law
- ✓ Patents Law
- ✓ Copyright Law
- ✓ WTO TRIPs code
- ✓ Berne/Rome/Paris Conventions

The consultants will then use a checklist of policies and adjudication procedures to identify major bottleneck areas. The checklist will also be used as a guide in stakeholder interviews and focus groups. A sample checklist is presented below.

<i>CHECKLIST FOR IPR POLICY AUDIT</i>	
<u>Policies/Legislation:</u>	
<input type="checkbox"/>	Signatory to WTO?
<input type="checkbox"/>	Signatory to major international IP conventions such as Berne Convention, Paris Convention, and Rome Convention?
<input type="checkbox"/>	Designated as a developed, developing, or least developed country?
<input type="checkbox"/>	Does the current IPR law meet or exceed the WTO/TRIPS standards?
<input type="checkbox"/>	If the country's IPR law currently does not meet the standards established by TRIPS, which specific provisions are planned to be phased in, and what is the schedule for the phase-in?
<input type="checkbox"/>	Are there areas of IPR protection which are regarded as particularly inadequate by the business community?

The procedures of IPR enforcement covers the processes of documentation of complaints, investigation (evidence collection), indictment, prosecution, trial, and decisions (judicial and administrative actions). A checklist for the IPR enforcement audit is also provided:

CHECKLIST FOR IPR ENFORCEMENT AUDIT

Procedures in IPR Enforcement:

Which of the following procedures are considered to be the key bottleneck areas?

- ☐ ***Investigation stage:***
 - a) gathering of documentary evidence**
 - b) application for search warrant**
 - c) approval of application for search warrant**
 - d) conducting a raid**

- ☐ ***Prosecution stage:***
 - a) filing complaint in court or other relevant administrative bodies**
 - b) respondent's counter-affidavit**
 - c) conduct of preliminary investigation**
 - d) trial proper**
 - e) decisions**
 - f) motions for reconsideration**
 - g) appeals of resolutions/decisions**

Task 3: Assess impact of major policy and procedure bottlenecks on business costs and overall competitiveness. After the major policy and procedural bottlenecks have been identified, the consultants will assess their impact on business costs and the nation's overall competitiveness. Economic models and other proxies can be utilized to estimate the efficiency and welfare loss of inadequate IPR protection to the society. In particular, the loss in terms of potential foreign investment, transfer of technology and know-how, and domestic innovation can be estimated. If serious bottlenecks are identified in the adjudication process of IPR violation, the consultant will identify the cost, especially from the business perspective, to file a complaint and follow through the adjudication process.

SAMPLE ASSESSMENT OF BOTTLENECKS IN THE PROSECUTION STAGE OF IPR CASES IN THE PHILIPPINES, 1993		
<i>Procedure</i>	<i>Average Length of Time Taken</i>	<i>Key Sources of Bottleneck</i>
Filing complaint	1 day to 2 weeks	➤ Obtaining presence of witnesses
Respondent's Counter-Affidavit	2 days to 1 month	➤ Extensions granted by the prosecutor ➤ Service of summons ➤ Raffling of complaint to investigating prosecutor
Conduct of preliminary investigation before the public prosecutor	1 month to a year	➤ Motions to quash search warrant ➤ Number of witnesses for the complainant and the respondent ➤ Service of summons/notices to respondent ➤ Appeals to the Department of Justice
Trial Proper	3 months to 5 years	➤ Postponement of hearings ➤ Clogged court dockets ➤ Unavailability of witnesses
Decisions	2 months to 2 years	➤ Lack of technical knowledge of the judge ➤ Low priority given by the government to IP protection and enforcement ➤ Unjustified inaction on the part of judges ➤ Clogged court dockets
Motions for reconsideration	1 week to 4 months	➤ Inaction by judges ➤ Clogged court dockets
Appeals of resolutions/decisions	3 months to 10 years	➤ Elevation of court records, particularly transcript of stenographic notes ➤ Volume of other appeal cases
<i>Source: SRI International, "Improving Adjudication Procedures for the Resolution of Intellectual Property Rights Cases in the Philippines, the Main Report," Philippine Exporters Confederation, Inc., January 1994.</i>		

Task 4: Benchmark against competitors and international best practices in critical areas.

This task will consist of selecting the appropriate competitor and benchmark countries to compare performance in major bottleneck areas. For example, if the existing trademark law provides inadequate protection to trademark owners, the consultants can compare the country's existing protection to its major competitors nations using the following benchmarks:

- Length of protection provided by the law.
- Legal procedures for renewing trademark protection.
- Enforcement mechanism, e.g., penalties for violation.

If the adjudication process for IPR cases is regarded as too onerous and costly for victims of IPR offenses, the consultants will benchmark the time and/or cost to businesses. Benchmarks can be used as proxies of the judiciary's effectiveness in adjudicating IPR cases. They may include:

- Percentage of complaints resulting in prosecution.
- Percentage of cases prosecuted which resulted in conviction.
- Percentage of complaints leading to conviction and sentences which were carried out.

References

- Black, Henry Campbell. 1979. *Black's Law Dictionary*. St. Paul MN: West Publishing Company.
- Gadbaw, R. Michael, and T. Richards. 1988. *Intellectual Property Rights: Global Consensus, Global Conflict?*, Westview Press.
- Hoekman, Bernard M. 1995. *Trade Laws and Institutions, Good Practices and the World Trade Organization*. World Bank Discussion Paper Number 282. Washington: World Bank.
- Mansfield, Edwin. 1995. *Intellectual Property Protection, Direct Investment, and Technology Transfer: Germany, Japan, and the United States*. IFC Discussion Paper Number 27. Washington: International Finance Corporation.
- Mansfield, Edwin. 1990. "Intellectual Property, Technology and Economic Growth," in *Intellectual Rights in Science, Technology and Economic Performance*. Westview Press.
- Boone, Peter, and others. 1994 (January). "Improving Adjudication Procedures for the Resolution of Intellectual Property Rights Cases in the Philippines, the Main Report," Philippine Exporters Confederation, Inc., Manila, the Philippines. SRI International.
- Boone, Peter, and John A. Mathieson. 1990 (December). "Intellectual Property Rights: Assessment of Current Policies and Practices, and Options for A.I.D. Initiatives." The Economics of Technology Working Paper Number One. SRI International.
- United States International Trade Commission. 1988. "Foreign Protection of Intellectual Property Rights and the Effect on U.S. Industry and Trade." USITC Publication 2065. Washington.
- World Trade Organization (WTO). 1995. "The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement." Geneva.

APPENDIX

POLICY QUESTIONNAIRE

EXPERT PANEL SCORECARD OF POLICIES

This scorecard seeks to collect and aggregate the views of experts regarding the current status of commercial policies, as well as changes in these policies that have taken place over the past year. You have been selected to participate in this exercise because of your expertise and practical knowledge of various policies affecting private enterprise activities, especially those related to exporting.

Please provide your responses to the following questions using your best judgements and knowledge on the policy climate. **Your participation and expertise are highly appreciated.**

The policy categories and specific examples are presented at the top of each page. Please review the entire document before you provide your responses, so that you will have a clear idea of the functional areas covered. These include the following:

1. Investment Policies
2. Pricing Policies
3. Import Policies
4. Financial Sector Policies
5. Exchange Rate Policies
6. Labor Policies
7. Tax Policies
8. Export Policies
9. Intellectual Property Rights Protection Policies

A. ASSESSMENT OF SPECIFIC POLICIES AFFECTING INVESTMENT (investment approvals, investment guarantees, incentives, etc.)

1. **Policy Status:** On a scale of 1 to 10, with 10 representing the best possible score, how would you rank the **current status** of the country's investment policies in comparison to your understanding of **average practices** (the norm for developing countries, with a score of 5) and **international best practices** (with a score of 10) in this area? Please indicate your answer by circling one of the numbers provided below:

Current Policies Versus Average Practices and Best Practices

very poor - poor - below average - average - above average - good - very good

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10)

2. **Policy Change:** On a scale of 1-10, how would you describe changes, if any, in the investment policies, including implementation of government policies over the past year. A score of 1 indicates major worsening, 10 indicates dramatic improvement, and 5 indicates no change. Please indicate your answer by circling one of the numbers provided below.

Changes in Policies over the Past Year

much worse - worse - stayed the same - improved - much better

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10)

3. **Evidence of Change:** If you feel that investment policies have improved or worsened over the past year, please give any reasons for the change that you know. Examples might include new legislation passed, processes streamlined, costs reduced, etc. Please be as specific as possible.

A. _____

B. _____

C. _____

B. ASSESSMENT OF PRICING POLICIES (Price controls, margin controls, and price interventions versus market prices)

1. **Policy Status:** On a scale of 1 to 10, with 10 representing the best possible score, how would you rank the **current status** of the country's pricing policies in comparison to your understanding of **average practices** (the norm for developing countries, with a score of 5) and **international best practices** (with a score of 10) in this area? Please indicate your answer by circling one of the numbers provided below:

Current Policies Versus Average Practices and Best Practices

very poor - poor - below average - average - above average - good - very good

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10)

2. **Policy Change:** On a scale of 1-10, how would you describe changes, if any, in the pricing policies, including implementation of government policies over the past year. A score of 1 indicates major worsening, 10 indicates dramatic improvement, and 5 indicates no change. Please indicate your answer by circling one of the numbers provided below.

Changes in Policies over the Past Year

much worse - worse - stayed the same - improved - much better

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10)

3. **Evidence of Change:** If you feel that pricing policies have improved or worsened over the past 6 months, please give any reasons for the change that you know. Examples might include new legislation passed, processes streamlined, costs reduced, etc. Please be as specific as possible.

A. _____

B. _____

C. _____

C. ASSESSMENT OF IMPORT POLICIES (Tariff policy, non-tariff barriers, customs policy, etc.)

1. **Policy Status:** On a scale of 1 to 10, with 10 representing the best possible score, how would you rank the **current status** of the country's import policies in comparison to your understanding of **average practices** (the norm for developing countries, with a score of 5) and **international best practices** (with a score of 10) in this area? Please indicate your answer by circling one of the numbers provided below:

Current Policies Versus Average Practices and Best Practices

very poor - poor - below average - average - above average - good - very good

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10)

2. **Policy Change:** On a scale of 1-10, how would you describe changes, if any, in the import policies, including implementation of government policies over the past year. A score of 1 indicates major worsening, 10 indicates dramatic improvement, and 5 indicates no change. Please indicate your answer by circling one of the numbers provided below.

Changes in Policies over the Past Year

much worse - worse - stayed the same - improved - much better

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10)

3. **Evidence of Change:** If you feel that import policies have improved or worsened over the past year, please give any reasons for the change that you know. Examples might include new legislation passed, processes streamlined, costs reduced, etc. Please be as specific as possible.

A. _____

B. _____

C. _____

D. ASSESSMENT OF FINANCIAL SECTOR POLICIES (Financial sector development, interest rate decontrol, market determination of credit allocation, etc.)

1. **Policy Status:** On a scale of 1 to 10, with 10 representing the best possible score, how would you rank the **current status** of the country's financial sector policies in comparison to your understanding of **average practices** (the norm for developing countries, with a score of 5) and **international best practices** (with a score of 10) in this area? Please indicate your answer by circling one of the numbers provided below:

Current Policies Versus Average Practices and Best Practices

very poor - poor - below average - average - above average - good - very good

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10)

2. **Policy Change:** On a scale of 1-10, how would you describe changes, if any, in financial sector policies, including implementation of government policies over the past year. A score of 1 indicates major worsening, 10 indicates dramatic improvement, and 5 indicates no change. Please indicate your answer by circling one of the numbers provided below.

Changes in Policies over the Past Year

much worse - worse - stayed the same - improved - much better

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10)

3. **Evidence of Change:** If you feel that financial sector policies have improved or worsened over the past year, please give any reasons for the change that you know. Examples might include new legislation passed, processes streamlined, costs reduced, etc. Please be as specific as possible.

A. _____

B. _____

C. _____

E. ASSESSMENT OF EXCHANGE RATE POLICIES (market-oriented system, access to foreign exchange, freedom to remit profits and capital)

- 1. Policy Status:** On a scale of 1 to 10, with 10 representing the best possible score, how would you rank the **current status** of the country's exchange rate policies in comparison to your understanding of **average practices** (the norm for developing countries, with a score of 5) and **international best practices** (with a score of 10) in this area? Please indicate your answer by circling one of the numbers provided below:

Current Policies Versus Average Practices and Best Practices

very poor - poor - below average - average - above average - good - very good

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10)

- 2. Policy Change:** On a scale of 1-10, how would you describe changes, if any, in exchange rate policies, including implementation of government policies over the past year. A score of 1 indicates major worsening, 10 indicates dramatic improvement, and 5 indicates no change. Please indicate your answer by circling one of the numbers provided below.

Changes in Policies over the Past Year

much worse - worse - stayed the same - improved - much better

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10)

- 3. Evidence of Change:** If you feel that exchange rate policies in this area have improved or worsened over the past year, please give any reasons for the change that you know. Examples might include new legislation passed, processes streamlined, costs reduced, etc. Please be as specific as possible.

A. _____

B. _____

C. _____

6. **ASSESSMENT OF LABOR POLICIES** (flexibility in hiring and firing, flexibility in wage policies, consistency with international standards for treatment of workers, etc.)

1. **Policy Status:** On a scale of 1 to 10, with 10 representing the best possible score, how would you rank the **current status** of the country's labor policies in comparison to your understanding of **average practices** (the norm for developing countries, with a score of 5) and **international best practices** (with a score of 10) in this area? Please indicate your answer by circling one of the numbers provided below:

Current Policies Versus Average Practices and Best Practices

very poor - poor - below average - average - above average - good - very good

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10)

2. **Policy Change:** On a scale of 1-10, how would you describe changes, if any, in labor policies, including implementation of government policies over the past year. A score of 1 indicates major worsening, 10 indicates dramatic improvement, and 5 indicates no change. Please indicate your answer by circling one of the numbers provided below.

Changes in Policies over the Past Year

much worse - worse - stayed the same - improved - much better

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10)

3. **Evidence of Change:** If you feel that policies in this area have improved or worsened over the past year, please give any reasons for the change that you know. Examples might include new legislation passed, processes streamlined, costs reduced, etc. Please be as specific as possible.

A. _____

B. _____

C. _____

G. ASSESSMENT OF TAX POLICIES (business-friendliness of corporate taxes, personal income tax, sales taxes, value added taxes and other taxes affecting business)

1. **Policy Status:** On a scale of 1 to 10, with 10 representing the best possible score, how would you rank the **current status** of the country's tax policies in comparison to your understanding of **average practices** (the norm for developing countries, with a score of 5) and **international best practices** (with a score of 10) in this area? Please indicate your answer by circling one of the numbers provided below:

Current Policies Versus Average Practices and Best Practices

very poor - poor - below average - average - above average - good - very good

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10)

2. **Policy Change:** On a scale of 1-10, how would you describe changes, if any, in the tax policies, including implementation of government policies over the past year. A score of 1 indicates major worsening, 10 indicates dramatic improvement, and 5 indicates no change. Please indicate your answer by circling one of the numbers provided below.

Changes in Policies over the Past Year

much worse - worse - stayed the same - improved - much better

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10)

3. **Evidence of Change:** If you feel that tax policies have improved or worsened over the past year, please give any reasons for the change that you know. Examples might include new legislation passed, processes streamlined, costs reduced, etc. Please be as specific as possible.

A. _____

B. _____

C. _____

H. ASSESSMENT OF EXPORT POLICIES (Export procedures, export taxes, export incentives, etc.)

1. **Policy Status:** On a scale of 1 to 10, with 10 representing the best possible score, how would you rank the **current status** of the country's export policies in comparison to your understanding of **average practices** (the norm for developing countries, with a score of 5) and **international best practices** (with a score of 10) in this area? Please indicate your answer by circling one of the numbers provided below:

Current Policies Versus Average Practices and Best Practices

very poor - poor - below average - average - above average - good - very good

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10)

2. **Policy Change:** On a scale of 1-10, how would you describe changes, if any, in the export policies, including implementation of government policies over the past year. A score of 1 indicates major worsening, 10 indicates dramatic improvement, and 5 indicates no change. Please indicate your answer by circling one of the numbers provided below.

Changes in Policies over the Past Year

much worse - worse - stayed the same - improved - much better

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10)

3. **Evidence of Change:** If you feel that export policies have improved or worsened over the past year, please give any reasons for the change that you know. Examples might include new legislation passed, processes streamlined, costs reduced, etc. Please be as specific as possible.

A. _____

B. _____

C. _____

**I. ASSESSMENT OF INTELLECTUAL PROPERTY PROTECTION POLICIES
(Consistency with WTO standards, enforcement of IPR protection, etc.)**

1. **Policy Status:** On a scale of 1 to 10, with 10 representing the best possible score, how would you rank the **current status** of the country's IPR policies in comparison to your understanding of **average practices** (the norm for developing countries, with a score of 5) and **international best practices** (with a score of 10) in this area? Please indicate your answer by circling one of the numbers provided below:

Current Policies Versus Average Practices and Best Practices

very poor - poor - below average - average - above average - good - very good

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10)

2. **Policy Change:** On a scale of 1-10, how would you describe changes, if any, in the IPR policies, including implementation of government policies over the past year. A score of 1 indicates major worsening, 10 indicates dramatic improvement, and 5 indicates no change. Please indicate your answer by circling one of the numbers provided below.

Changes in Policies over the Past Year

much worse - worse - stayed the same - improved - much better

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10)

3. **Evidence of Change:** If you feel that IPR policies have improved or worsened over the past year, please give any reasons for the change that you know. Examples might include new legislation passed, processes streamlined, costs reduced, etc. Please be as specific as possible.

A. _____

B. _____

C. _____